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ABSTRACT

The thesis of this article is that, in general, English literacy tests and other statutory sanctions applied in favor of English were originally formulated as an indirect but effective means of achieving discrimination on the basis of race, creed, or color. Many such provisions in the law are anachronistic, having only historical interest today, while others retain their vigor and continue to operate in a discriminatory manner. A few contribute to the "official" character that English enjoys in our society or to the health and safety of the operation of certain institutions. These have continuing legal and political validity. (Discussed in detail are English literacy requirements in the light of state regulation, number of people affected, federal regulation, and early federal practice; English literacy as a condition of voting; English literacy as a condition of business activity; English literacy in legal proceedings, English as the exclusive language of the American school system; and the special case of Puerto Rico. Appended are notes on U.S. statutory and constitutional requirements concerning English in each state.) (Author/AMM)

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ENGLISH LITERACY: LEGAL SANCTION FOR DISCRIMINATION

*Arnold H. Leibowitz**

I. Introduction

Recently the United States Supreme Court decided two cases which brought to the fore the complex question of the degree of political participation permitted non-English-speaking persons in the United States. The first, *Katzenbach v. Morgan,*[1] sustained the constitutionality of section 4(e) of the Voting Rights Act of 1965[2] — legislation which had invalidated state English literacy tests applied to individuals who had acquired a sixth grade education in American schools where English was not the language of instruction. The second, *Cardona v. Power,*[3] questioned, without deciding, the constitutionality of English literacy tests applied to a person literate in another language.

These two cases discussed only one area of American public life — voting — where participation is legally dependent upon knowledge of the English language. Similar statutory prescriptions are found elsewhere covering access to, or operations of, schools, businesses, public offices, and various governmental operations. In short, these two cases are part of a broader issue: the extent of legally sanctioned discrimination based on an individual's knowledge of English. The subject already has a long legal history, having frequently arisen with respect to federal policy in a territory where there was a large non-English-speaking population, or when a territory became a state of the Union. The problem has involved state policy as well, and there are now a host of state statutes prescribing knowledge or use of the English language in various activities. (See the Appendix.)

This essay will explore the constitutional and policy issues raised by the cases and statutes, bringing to bear the legal and political history of various language requirements. It will set forth with specificity the extent of literacy regulations, their original purpose and present effect, and the constitutional basis and limitation of legislation in this area. Finally, it will note where conflicts may be expected in the future and will set forth general guidelines to deal with these problem areas.

The thesis of this article is that, in general, English literacy tests and other statutory sanctions applied in favor of English were originally formulated as an indirect but effective means of achieving discrimination on the basis of race, creed, or color. Many such provisions in the law are anachronistic, having only historical interest today, while others retain their vigor and continue to

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[1] 384 U.S. 641, 658 (1966), *rev'g* 247 F. Supp. 196 (D.D.C. 1965). *See also* United States v. County Bd. of Elections, 248 F. Supp. 316 (W.D.N.Y. 1965).

[2] Voting Rights Act of 1965 § 4(e), 42 U.S.C. § 1973b(e) (Supp. I, 1966).

[3] 384 U.S. 672 (1966). *See also* Camacho v. Rogers, 199 F. Supp. 155 (S.D.N.Y. 1961); Camacho v. Doe, 7 N.Y.2d 762, 163 N.E.2d 140, 194 N.Y.S.2d 33 (1959).

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operate in a discriminatory manner. A few contribute to the "official" character that English enjoys in our society or to the health and safety of the operation of certain institutions. These, the author believes, have continuing legal and political validity.

II. English Literacy Requirements

A. State Regulation

There are numerous statutory provisions requiring knowledge of English, and these affect a wide spectrum of activities. (See the Appendix.) Forty-eight of the fifty states (all but Maryland and Tennessee) and almost all the territories (all but the Virgin Islands) have English as a legally sanctioned requirement for some endeavor or institution. The Appendix catalogs these English language requirements according to four general topics: (1) voting or holding public office, (2) education, (3) legal proceedings and legal notices, and (4) business regulation.

In the area of suffrage and public officeholding, we find twenty states administering an English language test as a prerequisite to voting,[4] five states with an English language qualification for various state and local offices,[5] and Puerto Rico under a federal law imposing such a requirement for the post of Resident Commissioner.[6] There are a few straws leaning in the opposite direction. Minnesota specifically requires assistance for voters who cannot speak English;[7] Hawaii permits a knowledge of Hawaiian to be substituted for English literacy as a voting prerequisite[8] (although this is now a purely academic concession since Hawaiian is not now a written language and is rarely spoken); and the Virgin

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[4] Ala. Const. amend. 223, § 1; Alas. Const. art. V, § 1; Alaska Stat. § 15.05.010 (1962); Ariz. Rev. Stat. Ann. § 16-101 (1956); Cal. Const. art. II, § 1; Conn. Gen. Stat. Ann. § 9-12 (1958); Del. Const. art. 5, § 2; Ga. Const. art. 2, § 704; Hawaii Const. art. II, § 1; La. Const. art. 8, § 1(c); La. Rev. Stat. § 18:31(3) (1969); Me. Rev. Stat. Ann. tit. 21, § 241 (1964); Mass. Gen. Laws Ann. ch. 51, § 1 (1958); Miss. Const. art. 12, § 244; Miss. Code Ann. §§ 3212, 3235 (1942); N.H. Rev. Stat. Ann. §§ 55:10, :12 (1955); N.Y. Const. art. 2, § 1; N.Y. Election Law § 168 (McKinney Supp. 1968); N.C. Const. art. VI, § 4; N.C. Gen. Stat. § 163-58 (1964); Ore. Const. art. II, § 2; Ore. Rev. Stat. § 247.131 (1968); Ore. Const. art. VIII, § [illegible] (school board elections); S.C. Code Ann. § 23-62(4) (1962); Va. Code Ann. § 24-68 (1969); Wash. Const. amend. 5; Wyo. Const. art. 6, § 9.

The Supreme Court in Lassiter v. Northampton Election Bd., 360 U.S. 45 (1959) lists nineteen states. *Id.* at 52 n.7. The Court did not include Alaska. The Court and, therefore, the text, has included states where literacy tests were required but English was not specifically mentioned.

> [T]here is information that in many of these States the literacy test is not applied uniformly, but is applied at the discretion of local election officials . . . . This lack of uniformity would appear to violate section 101 of the Civil Rights Act of 1964. It specifies that a literacy test must be administered uniformly and in writing to all prospective voters if it is administered to any voter in a State or political subdivision.

Hearings on H.R. 4249, H.R. 5538, and Similar Proposals Before Subcomm. No. 5 of the House Comm. on the Judiciary, 91st Cong., 1st Sess., ser. 3, at 223 (statement of Attorney General Mitchell).

[5] Ariz. Const. art. XX, § 8; Ariz. Rev. Stat. Ann. § 11-402 (1956); Cal. Elections Code §§ 1611, 14217 (West 1961); Ind. Ann. Stat. § 29-3201 (1969); Iowa Code Ann. § 365.17 (1946); Minn. Stat. Ann. § 203.22(4) (1962).

[6] 48 U.S.C. § 892 (1964).

[7] Minn. Stat. Ann. §§ 204.13, 206.20 (1962).

[8] Hawaii Const. art. II, § 1.

Islands, by federal law, specifically prohibits a language qualification test as a condition for voting.[9]

In education, thirty-two of the states and territories require English as the basic language of instruction in their public or private schools;[10] and three of these have restrictions on any foreign language instruction.[11] On the other hand, five states specifically allow teaching of or teaching in additional languages, while a number of cities have recently initiated elementary school programs utilizing foreign languages in instruction.[12]

In legal matters, eleven states require English in court proceedings,[13] while California and Nebraska require that legislative proceedings be in English.[14] Thirteen states and territories prescribe that their official records be in English,[15] and thirteen require at least some legal notices to be in English or in an English newspaper.[16] Again, there are some states where exceptions obtain. In New Mexico, for example, official legal publications may be in Spanish where seventy-five percent of the county is Spanish-speaking,[17] while in Texas, judicial proceedings in certain border counties may be conducted in Spanish with English interpreters.[18] In Puerto Rico, federal law requires the United States District Court proceedings to be in English;[19] but the government is officially bilingual, and certain public instruments must be in Spanish.[20]

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[9] Act of July 22, 1954, ch. 558, § 4, 68 Stat. 497 (Revised Organic Act of 1954).

[10] Ariz. Const. art. XX, §7; Akiz. Rev. Stat. Ann. § 15-202 (Supp. May, 1969); Ark. Stat. Ann. § 80-1605 (1960); Cal. Educ. Code § 71 (West 1969); Colo. Rev. Stat. Ann. § 123-21-3 (1963); Conn. Gen. Stat. Ann. § 10-17 (1958); Del. Code Ann. tit. 14, § 122(b)(5) (1953); Guam Gov't Code § 11200 (1961); Idaho Code Ann. § 33-1601 (1949); Ill. Ann. Stat. ch. 122, § 27-2 (Smith-Hurd 1962); Ind. Ann. Stat. §§ 28-3401 to -3403 (1948); Iowa Code Ann. § 280.5 (1946); Kan. Stat. Ann. § 72-1101 (1963); La. Const. art. 12, § 12; Act of May 5, 1969, ch. 234, § 1, *amending* Me. Rev. Stat. Ann. tit. 20, § 102(7) (1964); Act of May 5, 1969, ch. 234, § 2, *amending* Me. Rev. Stat. Ann. tit. 20, § 102 (1964); Mass. Gen. Laws Ann. ch. 76, § 1 (1958); Mich. Stat. Ann. § 15.3360 (1968); Minn. Stat. Ann. §§ 120.10, 126.07 (1960); Mont. Rev. Codes Ann. § 75-2002 (1947); Neb. Const. art. I, § 27; Nev. Rev. Stat. § 394.140 (1967); N.H. Rev. Stat. Ann. §§ 189:19-:21 (1955); N.M. Const. art. XXI, § 4; N.Y. Educ. Law § 3204 (McKinney Supp. 1968); N.C. Gen. Stat. § 115-198 (1965); N.D. Cent. Code § 15-47-03 (1960) (financial support withdrawn from schools not instructing in English); Okla. Stat. Ann. tit. 70, § 11-2 (1966); Ore. Rev. Stat. § 336.078 (1968); Pa. Stat. Ann. tit. 24, § 15-1511 (1962); S.D. Comp. Laws § 13-33-11 (1968); Wash. Rev. Code Ann. § 28.05.010 (1964); W. Va. Code Ann. § 18-2-7 (1966); Wis. Stat. Ann. § 40.46(1) (1966).

[11] Conn. Gen. Stat. Ann. § 10-17 (1958); Minn. Stat. Ann. §§ 120.10, 126.07 (1960); Wis. Stat. Ann. § 40.46(1) (1966).

[12] Ariz. Rev. Stat. Ann. § 15-202 (Supp. May, 1969); Cal. Educ. Code §§ 71, 6458(h) (West 1969); Act of May 5, 1969, ch. 234, § 2, *amending* Me. Rev. Stat. Ann. tit. 20, § 102 (1964); N.Y. Educ. Law § 3204 (McKinney Supp. 1968); R.I. Gen. Laws Ann. § 16-22-8 (Supp. 1967); New York Times, March 15, 1969, at 1, col. 8.

[13] Ark. Stat. Ann. § 22-108 (1962); Cal. Const. art. IV, § 24; Cal. Civ. Pro. Code § 185 (West 1954); Colo. Rev. Stat. Ann. § 37-1-22 (1963); Idaho Code Ann. § 1-1620 (1947); Mo. Ann. Stat. § 476.050 (1949); Mont. Rev. Codes Ann. § 93-1104 (1947); Neb. Const. art. I, § 27; Nev. Rev. Stat. § 1.040 (1967); Utah Code Ann. 78-7-22 (1953); Vt. Stat. Ann. tit. 4, § 671 (1958); Wis. Stat. Ann. § 256.18 (1957).

[14] Cal. Const. art. IV, § 24; Neb. Const. art. I, § 27.

[15] Ark. Stat. Ann. § 22-108 (1962); Cal. Const. art. IV, § 24; Cal. Civ. Pro. Code § 185 (West 1954); C.Z. Code tit. 3, § 278 (1963); Guam Code Civ. Proc. § 185 (1953); Idaho Code Ann. § 1-1620 (1947); Ky. Rev. Stat. Ann. § 446.060(2) (1963); Mo. Ann. Stat. § 476.050 (1949); Mont. Rev. Codes Ann. § 93-1104 (1947); Neb. Const. art. I, § 27; N.J. Rev. Stat. Ann. § 52:36-4 (1955); Utah Code Ann. § 78-7-22 (1953); Vt. Stat. Ann. tit. 4, § 671 (1958); Wis. Stat. Ann. § 256.18 (1957).

[16] Ariz. Rev. Stat. Ann. § 39-204 (1956); Cal. Corp. Code § 8 (West 1955); Ind. Ann. Stat. §§ 2-807, -4706 (1967); Iowa Code Ann. § 618.1 (1946); Ky. Rev. Stat. Ann. § 446.060 (1963); La. Rev. Stat. §§ 1:52, 43:201 to :202 (1950); Me. Rev. Stat. Ann. tit. 1, §§ 353, 601 (1964); Me. Rev. Stat. Ann. tit. 5, § 1547 (1964); Mass. Gen. Laws Ann. ch. 200A, § 8 (1955); N.J. Rev. Stat. § 35:1-2.1 (1968); N.D. Cent. Code § 46-06-2 (1960); Ohio Rev. Code Ann. § 3905.11 (Page 1954); Wash. Rev. Code Ann. § 65.16.020 (1966); Wis. Stat. Ann. § 324.20 (1958).

[17] N.M. Stat. Ann. § 10-2-11 (1953).

Statutory regulation of the language of business varies considerably. Five states specifically require entrance examinations — conducted in English — for occupations ranging from the professions to barbering;[21] nine states insist that various goods be labeled in English;[22] and twelve states specify English for various business records filed with the government or given to purchasers.[23]

These statutory requirements are only a small part of the English literacy requirements imposed on individuals. Municipal ordinances and administrative regulations multiply these statutory requirements manyfold. Most important, however, is the nonlegal, practical necessity of knowing English in a variety of situations. For example, almost all states require examinations before permitting an individual to practice certain professions. To the author's knowledge, all of these are conducted in English, although as noted above this is the result of a direct statutory mandate in only five states. While these few tests are administered in English because of legal regulations, many more such language entrance requirements arise by custom as a reflection of the actual linguistic background of the people administering the test.

The importance of these nonstatutory English literacy impediments should not be underestimated. The practical and legal consequences that flow from the ability to handle the paper economy, the language of which is English, are enormous. Although, as we shall see, the courts have generally been hostile to statutory impositions of English, this has not been true in common law situations where the courts, in the few decisions that have discussed the issue, usually have reinforced the practical need for a knowledge of English.[24] Thus, the general rule is that illiteracy will not rebut the presumption that a bank depositor has knowledge of the rules printed in his passbook,[25] and posting railroad signs in English has been held to fulfill the notice requirements imposed on a railroad company by state statute — even though the statute did not mention language and the injured plaintiff could not read English.[26] A more recent example of the pressure exerted by the combined legal and practical consequences of English literacy is the draft deferment examinations, which are given only in English. Puerto Rican university students have argued that the examinations unfairly discriminate against the Spanish-speaking Puerto Ricans.[27]

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[18] Tex. Rev. Civ. Stat. Ann. art. 3737d-1 (Supp. 1968).

[19] 48 U.S.C. § 864 (1964).

[20] P.R. Laws Ann. tit. 1, § 51; P.R. Laws Ann. tit. 4, § 1017 (1965).

[21] Conn. Gen. Stat. Ann. §§ 20-108, -146; N.Y. Gen. Bus. Law § 434.3 (McKinney 1968); Okla. Stat. Ann. tit. 59, § 806 (1963); Tex. Rev. Civ. Stat. Ann. arts. 2879, 2880 (1965); Utah Code Ann. §§ 58-12-11, 58-5-3 (1953).

[22] Ark. Stat. Ann. § 78-701 (1957); Ark. Stat. Ann. § 82-720 (1960); Ind. Ann. Stat. § 35-3607 (1969); Iowa Code Ann. §§ 189.9, 204.10, 209.3, 216.1 (1969); La. Rev. Stat. § 51:761 to :762 (1965); Mass. Gen. Laws Ann. ch. 95, § 261B (1958); Mass. Gen. Laws Ann. ch. 131, § 105 (1958); Mass. Gen. Laws Ann. ch. 149, § 147B (1958); N.Y. Agric. & Mkts. Law §§ 201-a to -b (McKinney 1954); N.Y. Labor Law § 354.4 (McKinney 1965); Ohio Rev. Code Ann. § 3741.02 (Page 1954); Pa. Stat. Ann. tit. 3, § 57.4 (1963); Pa. Stat. Ann. tit. 43, § 491-14 (1964); Utah Code Ann. § 58-17-17 (1953).

[23] Cal. Corp. Code § 8 (West 1955); Conn. Gen. Stat. Ann. § 36-235 (1958); Hawaii Rev. Stat. § 431-20 (1968); Iowa Code Ann. § 499.40 (1946); Ky. Rev. Stat. Ann. § 446.060 (1963); La. Rev. Stat. § 12:24 (1969); Minn. Stat. Ann. § 317.08 (Supp. 1969); N.J. Rev. Stat. Ann. §§ 14A:1-6, 47:1-2 (1939); N.Y. Ins. Law § 8 (McKinney 1966); Okla. Stat. Ann. tit. 16, § 28 (1951); Tex. Ins. Code Ann. art. 8.24(a) (1963); Wis. Stat. Ann. § 214.13 (1957).

[24] On the other hand, illiteracy was held relevant in a series of criminal cases prior to Gideon v. Wainwright, 372 U.S. 335 (1963) to determine whether the defendant had made an intelligent waiver of the right to counsel. *See, e.g.,* Mario v. Regan, 332 U.S. 561 (1947).

[25] Bulakowski v. Philadelphia Sav. Fund Soc'y, 270 Pa. 538, 542, 113 A. 553, 554 (1921). *Contra,* Newman v. State Band, 68 Misc. 316, 317, 123 N.Y.S. 926, 927 (Sup. Ct. 1910).

These practical compulsions undercut the rationale behind many of the statutes listed in the Appendix, some of which are justified as a legal impetus to the assimilative process. A recent comprehensive study[28] of non-English mother tongue retention among various American ethnic and religious groups indicates that the assimilation of non-English-speaking groups proceeds rather rapidly; by the third generation the problem is no longer the acquisition of English but the retention of the mother tongue.[29] This has been so even when the number of foreign-speaking Americans was considerably larger than at present, the school system was taught in the foreign tongue, and the legal sanctions of a less compelling character.[30] It would seem, therefore, that the legal sanction has, at best, only marginal significance when compared to the practical needs mentioned above, the primarily English communications media, and the natural desire to participate fully in the cultural life of the country.

B. The Number of People Affected

Nevertheless, legal regulation is extensive, and although the number of people affected by official English literacy requirements cannot be precisely determined, it appears to be large. There are an estimated twenty million persons in the United States whose mother tongue is not English,[31] with perhaps three million children included in this group.[32] Precise statistics with respect to the ability of these persons to understand, read, and write English are not available.[33] Almost two-thirds of these children are Spanish-speaking. As of 1960, the Puerto

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[26] Bare v. Norfolk & S. R.R., 176 N.C. 247, 248-49, 97 S.E. 11, 12 (1918). Similarly, the usual legal rule that a will cannot be contested because the draftsman made a mistake is not changed where the will is drafted in English and the testator is not familiar with the language. *In re* Gluckman's Will, 87 N.J. Eq. 638, 101 A. 295 (Ct. Err. & App. 1917); *In re* Knutson's Estate, 144 Minn. 111, 174 N.W. 617 (1919).

[27] San Juan Star, Oct. 24, 1966, at 1; San Juan Star, Oct. 26, 1966, at 3; San Juan Star, Oct. 28, 1966, at 1.

[28] Language Loyalty in the United States (J. Fishman ed. 1966) [hereinafter cited as Language Loyalty].

[29] Fishman and his associates do not distinguish between individuals who are bilingual and those who do not know English at all. The problems discussed in this article, of course, arise only where there is inadequate knowledge of English. Nevertheless, an analysis of the statistical information under each of the language groups discussed in the Fishman work indicates that the statement in the text is a safe conclusion. Fishman & Hofman, *Mother Tongue and Nativity in the American Population,* in Language Loyalty 41-45.

[30] It has been estimated that in 1910 nine million Americans spoke German as their mother tongue. A number of states and municipalities had passed statutes permitting German to be the language of instruction. Kloss, *German-American Language Maintenance Efforts,* in Language Loyalty 212-23.

[31] Fishman & Hofman, *supra* note 29, at 42.

[32] *The Challenge of Bilingualism,* in Reports of the Working Committees, Northeast Conference on Teaching of Foreign Languages, 1965 at 96 (G. Bishop ed. 1965).

[33] The Census Bureau provides data on mother tongue only for foreign-born individuals. It does not provide information on language fluency.

Rican population in the United States totaled 892,513, with over 642,622 in New York state.[34] There were approximately three and one-half million Spanish-speaking people in the Southwest, primarily of Mexican descent.[35] Of 650,000 Indians — 150,000 Indian children — perhaps eighty percent speak a mother tongue other than English.[36]

As of 1960, there were 9.7 million foreign-born persons in the United States, of whom slightly less than three-fourths, or approximately 7 million, had a mother tongue other than English. This foreign-born population is substantially reduced from the 14 million of 1910-30 and the 11 million of 1940.[37] The Immigration Act of 1965[38] will undoubtedly continue this downward trend. On the other hand, this same legislation has already resulted in a shift in the source of migrants, a shift which makes a percentage increase in those with a non-English mother tongue more likely. Fewer immigrants now come from countries where English is the native language or used frequently (such as Britain, Ireland, Netherlands, Germany, Norway, or Sweden), and more tend to come from countries where English is infrequently spoken (such as Italy, Greece, Portugal, or China).[39] Moreover, there is increasing sensitivity and litigation in matters affecting racial, national, or cultural differences. English literacy requirements resulting in racial discrimination would seem to be a logical target of this movement. Thus, we may justifiably expect a number of future cases to raise the issue of the constitutionality of English literacy statutes in various areas of American life.

C. Federal Regulation

1. Naturalization

Although in many cases the constitutional basis for these regulations is unclear, English literacy requirements have rarely been questioned. The United States Constitution makes no mention of language.[40] This is somewhat unusual since the designation of an official language is quite common in constitutional documents, not only in multilingual countries,[41] but also in contries where only one language is generally used.[42]

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[34] United States Bureau of the Census, Puerto Ricans in the United States, Final Report 2 (1963).

[35] In 1950, and again in 1960, data was compiled as to the number of people having Spanish surnames. Extrapolations from this data have been made with errors likely, for not everyone who has a Spanish surname is Spanish-speaking, and there may be others who are Spanish-speaking but do not have a Spanish surname. In 1960, in the five states of the Southwest (Arizona, New Mexico, California, Colorado, and Texas), out of a total population of 29,304,012, persons with Spanish surnames numbered 3,465,000. Manuel estimates from this that there are 3.8 million Spanish-speaking people in the Southwest. H. Manuel, Spanish Speaking Children of the Southwest 14 (1965).

[36] *Hearings on H.R 9840 and H.R. 10224 Before the Subcomm. on Education of the House Comm. on Education and Labor,* 90th Cong., 1st Sess. at 398-99 (1967).

[37] Fishman & Hofman, *supra* note 29, at 36.

[38] Immigration Act of 1965, 8 U.S.C. §§ 1151-56, 1181-82 (Supp. II, 1967).

[39] N.Y. Times, March 18, 1968, at 1, col. 1.

[40] To a degree, of course, there is some implicit recognition of English since the Constitution is written in that language.

[41] *See generally* E. McWhinney, Federal Constitution-Making for a Multi-National World (1966); R. Bowie & C. Friedrich, Studies in Federalism (1954). The bilingual experience of Canada is detailed in Royal Comm. on Biculturalism and Bilingualism, A Preliminary Report 33 (1965).

[42] R. Fitzgibbon, The Constitutions of the Americas 228, 323, 398, 448, 556, 605

Federal legislation has, until recently, been similarly silent with respect to the use of English.[43] There is one significant legislative provision — originally section 304 of the Nationality Act of 1940[44] — with respect to naturalized citizenship:

> No person . . . shall be naturalized as a citizen of the United States upon his own petition who cannot demonstrate —
>
> (1) an understanding of the English language, including an ability to read, write and speak words in ordinary usage in the English language . . . .[45]

It was not until 1950[46] that the Federal Code established English literacy as a condition of naturalization.[47] However, a judicial gloss on the language of the naturalization statute — that a candidate for citizenship be "attached to the principles of the Constitution of the United States" — had earlier achieved similar results. The applicant, the court reasoned, could not be attached to a document he could not read.[48] The constitutionality of the statute was upheld in the lower courts[49] on the ground that citizenship is a privilege — a matter of grace — the granting of which Congress may condition. These conditions may be quite different than the conduct required of native-born citizens.[50] The stated policy basis for the statute rests on the theory that being able to read the Constitution in its original language assures the seriousness of purpose and dedication to constitutional principles that the oath of citizenship demands.[51] This theory is questionable since there is no evidence that the Constitution and its principles can no longer be understood if read in a foreign language. Nor is there any reason to believe that ability to comprehend constitutional niceties in any way

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(1948) cites the following constitutions in the Western Hemisphere that designate an official language: CUBA CONST. art. 6; ECUADOR CONST. art. 7; GUAT. CONST. art. 4; HAITI CONST. art. 29; NICAR. CONST. art. 7; and PAN. CONST. art. 7.

[43] Section 3 of the Immigration Act of 1917 excluded aliens who were illiterate in any language. Act of Feb. 5, 1917, ch. 29, § 3, 39 Stat. 875. This exclusionary provision was the result of an active campaign initiated by the Immigration Restriction League of New England, which feared Irish and German immigrants. The legislation gained sufficient support from organized labor and other groups to finally overcome continuing presidential resistance. Presidents Cleveland (in 1897), Taft (in 1913), and Wilson (twice) vetoed this legislation. B. SOLOMON, ANCESTORS AND IMMIGRANTS 82-175 (1956). By the time of the Act's passage, increased literacy in Europe made it ineffective as a general exclusionary device. When this became clear in 1920, percentage quotas were rapidly enacted. *See* J. HIGHAM, STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM: 1860-1925 at 308-11 (1955).

[44] Act of Oct. 14, 1940, ch. 876, § 304, 54 Stat. 1140.

[45] 8 U.S.C. § 1423 (1964).

[46] The 1940 law required the candidate only to speak English. Act of Oct. 14, 1940, ch. 876, § 304, 54 Stat. 1140. The 1950 amendments added the requirement of reading and writing. Act of Sept. 23, 1950, ch. 1024, § 30, 64 Stat. 1018.

[47] In 1950, Congress permitted limited exceptions to the Act for those physically incapable of complying with the statute and "to any person who, on the date of approval of this amendment, is over fifty years of age and has been legally residing in the United States for twenty years . . . ." Act of Sept. 23, 1950, ch. 1024, § 30, 64 Stat. 1018. *See Petition of* Contreras 100 F. Supp. 419 (S.D. Cal. 1951).

[48] *Petition of* Katz, 21 F.2d 867, 868 (E.D. Mich. 1927). *But see In re* Rodriguez, 81 F. 337 (W.D. Tex. 1897).

[49] *See, e.g., In re* Swenson, 61 F. Supp. 376 (D. Ore. 1945).

[50] United States v. Bergmann, 47 F. Supp. 765, 766-67 (S.D. Cal. 1942); Schneider v. Rusk, 377 U.S. 163 (1964) eliminated the distinction between naturalized and native-born citizens with respect to expatriation, but as yet no such approach has been suggested with respect to the original acquisition of citizenship.

[51] *Petition of* Katz, 21 F.2d 867, 868 (E.D. Mich. 1927).

relates to good citizenship.[52] Congress itself has frequently violated this announced statutory principle when it collectively naturalized large numbers of non-English-speaking peoples in Louisiana,[53] in Florida,[54] in the Southwest after the war with Mexico,[55] and in Puerto Rico.[56]

One practical justification for the English literacy requirement is that if the naturalized citizen can read, write, and speak the English language, his acclimation to American life and the adjustment of his children is much smoother. This argument certainly reflects the practical necessity of English literacy, but, as we have already seen, it is doubtful that the legal requirement is of major significance in motivating those of a foreign tongue to learn the language of ther new environment.

The other rationale behind the English literacy test for naturalization is less substantive and more symbolic. Frequently, the purpose of designating an official language is to provide a unifying symbol and to emphasize the continuity of a given cultural tradition. An English literacy requirement, then, establishes the fact that the United States is an English culture and that its citizens will have to learn English in order to participate fully in it. The very existence of a literacy test establishes the "official" character of the language. As we shall see, except for brief references in Supreme Court dicta, the official character of English has never been made explicit but has been an implicit assumption behind much governmental activity. In other countries, problems have arisen where the officially designated language did not correspond to the linguistic tradition or capabilities of large numbers of people (e.g., India and Canada). No such problem is present in the United States (except for the special case of Puerto Rico, which will be discussed in greater detail below), so that the author would question neither the existing official character of English nor the desirability of an open articulation of the language's status. What should be clarified is what follows from such an assumption or articulation. An official language would properly regulate governmental proceedings and establish a customary norm for the country. It should not, however, imply or require statutes aimed at regulating business or social adjustment.

2. *Education*

The other federal statute that relates to language is found in Title VII of the Elementary and Secondary Education Amendments of 1967, otherwise known

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52 *In re* Rodriguez, 81 F. 337, 355 (W.D. Tex. 1897).

53 Treaty with the French Republic, April 30, 1803, art. 111, 8 Stat. 202 (1846), T.S. No. 86 (effective Oct. 21, 1803). *See* Scott v. Sandford, 60 U.S. (19 How.) 393, 533 (1856).

54 Treaty of Amity, Settlement and Limits, with his Catholic Majesty, Feb. 22, 1819, art. 6, 8 Stat. 256 (1846), T.S. No. 327 (effective Feb. 22, 1821). *See* American Ins. Co. v. Canter, 26 U.S. (1 Pet.) 511, 542 (1828).

55 Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico, Feb. 2, 1848, art. VIII, 9 Stat. 929 (1851), T.S. No. 207 (effective July 4, 1848). *See* Boyd v. Nebraska *ex rel.* Thayer, 143 U.S. 135, 169 (1892). *See also* Act of Sept. 9, 1850, ch. 50, 9 Stat. 452 (admitting California to the Union); Act of Sept. 9, 1850, ch. 49, 9 Stat. 446 (establishing territorial government for New Mexico); Act of Sept. 9, 1850, ch. 51, 9 Stat. 453 (establishing territorial government for Utah).

56 Act of March 2, 1917, ch. 145, § 5, 39 Stat. 953.

as the Bilingual Education Act.[57] Under this Act, $85 million was authorized over a term of three years to: (1) develop special instructional materials for use in bilingual educational programs; (2) provide in-service training for teachers, teachers' aides, and counselors participating in bilingual programs; and (3) establish, maintain, and operate special programs for children of limited English-speaking ability.[58]

Since the acquisition of Louisiana in 1803, both the legislative and the executive branches of the federal government have followed policies injecting English into United States territories,[59] regardless of local opposition and whether or not it was expected that the territory would become a state.[60] Generally, accommodations were few and of limited duration. The significance of the Bilingual Education Act is that it marks the first time that the federal government has taken cognizance of the special educational problems of children who are the products of "environments where the dominant language is other than English." The Act not only permits but encourages instruction in a language other than English.

D. Early Federal Practice

1. Territorial Experience

Since this Act does mark a startling reversal in federal policy, a brief historical review of that policy is in order.[61] Although the French language was dominant in Louisiana at the time of the territorial acquisition,[62] President Jefferson appointed William Claiborne, who spoke no French at all,[63] to the post of Territorial Governor. Upon assuming office, Governor Claiborne suggested that all public laws be drafted only in English, a proposal that was withdrawn after sharp public protest.[64] After these initial blunders, the president and the governor embarked upon a policy of recognizing both French and English. In 1806, for the first time, federal laws were printed in the French language, and shortly thereafter a provision was made by the territorial legislature for printing all federal laws applicable to the territory in both French and English.[65] In addition, French, English, and Spanish were used in the local courts for some years after the United States's acquisition of the territory.[66]

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[57] Bilingual Education Act, 20 U.S.C. § 880b to -6 (Supp. III, 1968). Recently the Nixon administration has pledged to pursue a national goal of total literacy. The Washington Post, Sept. 23, 1969, at 1, col. 1. This will no doubt lead to additional federal legislation in the area.

[58] Bilingual Education Act § 704, 20 U.S.C. § 880b-2 (Supp. III, 1968).

[59] Scholars, usually educators, who have dealt with the language question have generally taken the view that the Government has not concerned itself with the preservation of English.

> Just as there is hardly any ethnic foundation to American nationalism so there is no language awareness in conjunction with the use of English. The English language does not figure prominently in the scheme of values, loyalties, and traditions by which Americans define themselves as "American."

The Challenge of Bilingualism, in Reports of the Working Committees, Northeast Conference on Teaching of Foreign Languages, 1965 at 60 (G. Bishop ed. 1965). *See also* Fishman, *An Inquiry into Language Maintenance Efforts*, in Language Loyalty 30. Educators primarily concerned with school policy and quality of expression have naturally tended to discount or overlook governmental legal activity. This article, concerned as it is with legal sanctions, may tend to err in the opposite direction.

[60] *See generally* M. Farrand, The Legislation of Congress for the Organized Territories of the United States 1789-1895 (1896).

[61] Strangely, no such historical analysis of English language requirements in federal or state governments is found in English. A good historical account of state and federal statutes is to be found in H. Kloss, Das Volksgruppenrecht in den Vereinigten Staaten von Amerika (1940). Kloss focuses primarily on legal requirements in relation to school instruction although he also discusses other areas, especially official publication requirements. *See also* H. Kloss, Das Nationalitätenrecht der Vereinigten Staaten von Amerika (1963).

[62] Letter from Peter Derbigny to the Secretary of the Treasury, Aug. 12, 1803, in 9 Carter, Territorial Papers of the United States 13 (1940) [hereinafter cited as Territorial Papers].

[63] President Jefferson recognized the desirability of appointing a bilingual individual to fill the office of Territorial Governor, and had first offered the post to Lafayette. Letter from Thomas Jefferson to William Claiborne, Aug. 30, 1804, in 9 Territorial Papers 282.

The federal government has been uncompromisingly insistent that English become the basic language of the American Indian,[67] even though the sovereignty of Indian tribes has been recognized for various purposes,[68] and even though separation of the Indian from the mainstream of American life was envisioned and, at times, encouraged.[69] Until 1934, official policy not only required English as the language of instruction in Indian schools,[70] but the school itself was intended to uproot the child from his native environment.[71] Use of the native language was to be avoided, and in some cases Indian children were punished for reverting to their native tongue even at play.[72] Since 1934, this policy has softened, yet English remains the primary language of instruction and Americanization still the goal.[73] A greater appreciation of the Indian child's cultural and psychological adjustment process has precipitated compromise on the use of the native tongue. Bilingual textbooks are prepared for use in the early grades, and frequently the native language is spoken in the schools in order to make contact with non-English-speaking students.[74]

The initial organic act governing the Territory of New Mexico[75] followed the standard format without recognizing that over one-half the population was of Spanish descent.[76] Subsequently acknowledging the need for some accommodation to the Spanish-speaking populance of the territory, Congress, on March 3, 1853, authorized the New Mexico Assembly to employ a translator, interpreter, and two clerks for each house.[77] Of the four clerks, two were to be qualified in Spanish and two in English. On February 14, 1884, Congress further authorized funds for the translation of bills, laws, and journals of the territory's legislature, on condition that the legislative proceedings, records, and laws of the territory be printed in English.[78]

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[64] Letter from Etienne Bore to Thomas Jefferson, Feb. 10, 1804, in 9 Territorial Papers 185.

[65] Excerpt from the Session of the Legislative Council of May 26, 1806, 9 Territorial Papers 653-54; Letter from John Gurley to the Secretary of the Treasury, July 24, 1806, in 9 Territorial Papers 677.

[66] Letter from James Brown to Samuel Smith, Nov. 28, 1805, in 9 Territorial Papers 538. Bilinguality was a factor in judicial and legislative assembly appointments. Letter from Thomas Jefferson to William Claiborne, Aug. 30, 1804, in 9 Territorial Papers 282-83; Letter from Thomas Jefferson to William Claiborne, Dec. 2, 1804, in 9 Territorial Papers 343; Letter from Thomas Jefferson to William Claiborne, Jan. 7, 1805, in 9 Territorial Papers 363. A knowledge of French was also an important asset in obtaining lesser executive appointments. Letter from Secretary of the Treasury to the President, March 12, 1807, in 9 Territorial Papers 718.

[67] A good history of American Indian education is set forth in E. Adams, American Indian Education (1946). Detailed early historical material is compiled in A. Fletcher, Indian Education and Civilization, S. Exec. Doc. No. 95, 48th Cong., 2d Sess. (1888).

[68] *See* Talton v. Mayes, 163 U.S. 376, 379-80 (1896); Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 529 (1832); Native Am. Church v. Navajo Tribal Council, 272 F.2d 131, 134-35 (10th Cir. 1959).

[69] *See generally* F. Cohen, Handbook of Federal Indian Law *passim* (1946).

[70] A. Fletcher, *supra* note 67, at 170.

[71] Annual Reports of the Sec'y of the Interior, Report of the Commissioner of Indian Affairs, H.R. Doc. No. 5, 55th Cong., 3d Sess. 7-13 (1898).

[72] *Id.* at 344.

[73] W. Beatty, Education for Cultural Change 391-414 (1953).

[74] E. Adams, *supra* note 67, at 86, 89.

[75] Act of Sept. 9, 1850, ch. 49, 9 Stat. 446.

[76] *See* 36 Cong. Rec. 193 (1920).

Shortly after the acquisition of Hawaii in 1897, the federal government introduced English into two most critical areas: the islands' legal and educational systems. The basic organic act passed for Hawaii in 1900[79] directed that "[a]ll legislative proceedings shall be conducted in the English language."[80] Initially, laws were published in both English and Hawaiian, but subsequent promulgations were published only in English.[81] In 1919 the federal government required all teaching in public and private schools to be in English, but Hawaiian could be taught in addition to English in the high schools.[82] These acts created few problems, but after the First World War the attempted restriction on the cultivation of foreign languages and culture became the subject of a long and painful controversy involving a number of Oriental groups that had founded a series of private foreign-language schools.[83] All of these schools supplemented the public school system, in which English was the medium of instruction, and all were supported exclusively by private contributions. Most of these schools provided two or three hours of instruction each day — one or one and one-half hours prior to the opening of the public school, and the same period of time at the close of the public school day.[84]

The governor of Hawaii, an executive branch appointee, initiated legislation in 1919 to severely limit the operation of the private foreign-language schools. Contrary to his expectation, there was a sharp outcry against the legislation.[85] This led the governor to request a survey of education in Hawaii in which both public and private schools were examined. The survey subjected the private foreign-language schools to particularly careful scrutiny[86] and recommended their abolition unless reestablished in the future by the Territorial Department of Education upon evidence of sufficient demand.[87]

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[77] Act of March 3, 1853, ch. 148, 10 Stat. 257.

[78] Act of Feb. 14, 1884, ch. 6, 23 Stat. 2.

[79] Act of April 30, 1900, ch. 339, 31 Stat. 141.

[80] *Id.* § 44, 31 Stat. 148. Jurors were also required to know English to serve on the petit or grand juries. *Id.* § 83, 31 Stat. 157.

[81] Ch. 1, ser. A-1, [1943] Laws of the Territory of Hawaii Reg. Sess. 1. At the outset, where there was any conflict between the Hawaiian and English versions the Hawaiian version was to control, but the law was later changed so that the English version was binding. *Id.* § 8.

[82] Ch. 19, ser. A-22, [1935] Laws of the Territory of Hawaii Reg. Sess. 22.

[83] The private foreign-language schools had been operating even prior to the island's annexation to the United States in 1898. They were initially church sponsored and had as their major purpose the continuation of a particular religious tie for the community involved. Thus, a German-language school in connection with the Lutheran Church was started in 1882; a Portuguese-language school in 1889; Chinese schools began in 1892; and in 1896, the first Japanese-language school was started. 1922 Report of the Governor of Hawaii to the Sec'y of the Interior 5. For the Japanese, these schools not only served a religious purpose — the first were Christian mission schools, but later Buddhist schools predominated — but also filled an educational need, since many Japanese were contract laborers intending to return to Japan after the period of indenture had expired. Between 1885 and 1900, 70,000 Japanese contract laborers came to Hawaii. From 1901 to 1907, another 11,000 Japanese immigrated to the islands. By 1920 the Japanese had organized approximately 163 private foreign-language schools in Hawaii, with approximately 400 teachers serving slightly more than 20,000 pupils. In addition, there were 10 Korean schools with 800 pupils in attendance and 12 Chinese schools teaching 1,150 pupils. U.S. Dept. of the Interior, Bull. No. 16, A Survey of Education in Hawaii Made Under the Direction of the Commission of Education 108-14 (1920) [hereinafter cited as Survey of Education].

[84] In addition, many Japanese children attended their schools on Saturday and during the summer, when public schools were not in session. Survey of Education 114.

[85] 1920 Report of the Governor of Hawaii to the Sec'y of the Interior 7-8.

Legislation was passed in the early 1920's[88] regulating these foreign-language schools and the teaching of foreign languages; the declared purpose was to foster Americanization.[89] The law subjected all private foreign-language schools and teachers to licensing and regulation by the Territorial Department of Education. Private foreign-language schools were limited to one hour a day, with courses, textbooks, attendance requirements, and age qualifications of the pupils prescribed by the department. Teachers in these schools were required to speak, read, and write the English language, and to be versed in American history and government. This territorial legislation was declared unconstitutional in the case of *Farrington v. Tokushige,*[90] and an official severance was made between the private foreign-language schools and the public authorities on June 30, 1927.[91]

After the Japanese attack on Pearl Harbor, the Hawaiian legislature again passed an act designed to regulate private foreign-language schools, this time by preventing very young children from attending such schools.[92] A federal district court held the law unconstitutional,[93] but the Supreme Court reversed on a procedural ground.[94] The law was then tempered[95] and, after statehood, dropped altogether.[96]

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[86] The analysis of the content of the Japanese-language school textbooks alone composed a twenty-four-page appendix to the resulting Survey of Education.

[87] Survey of Education 140.

[88] Act 30, [1920] Laws of the Territory of Hawaii Spec. Sess. 30, *as amended,* Act 171, [1923] Laws of the Territory of Hawaii Reg. Sess. 204, *and as further amended,* Act 152, [1925] Laws of the Territory of Hawaii Reg. Sess. 178.

[89]

> When one considers that of the 16,548 children enrolled in foreign-language schools, 16,178 are American citizens and will take part in the Government of the United States, and especially the local government of Hawaii, it is not difficult to understand the concern which the alien-language school gives the citizens of Hawaii. If these children are to be Americans, the American language and American principles as developed in the American public schools must be a dominating factor in their lives. As long as the parents of these children aggressively foster their alien nationality and alien ideals, thus constituting a nucleus of alien principalities, they constitute a potential if not actual menace to a friendly adjustment and good will.
>
> I sincerely hope that the not far distant future will find the alien parents will withdraw from their attempt to alienize our American children.

1923 Report of the Governor of Hawaii to the Sec'y of the Interior 8-9.

[90] 273 U.S. 284, 298-99 (1927).

[91] 1927 Report of the Governor of Hawaii to the Sec'y of the Interior 79. *See also* 1928 Report of the Governor of Hawaii to the Sec'y of the Interior 83-84.

[92] Ch. 21 B, ser. A-27, [1943] Laws of the Territory of Hawaii Reg. Sess. 38. No child could be taught a foreign language in any school unless the pupil (a) had passed the fourth grade and had periodically passed a standard test in English composition; or (b) had passed the eighth grade; or (c) had attained the age of fifteen years. In addition, prospective teachers were required to take examinations to establish their knowledge of English. Enforcement was by injunction rather than by immediate criminal penalties.

[93] Mo Hock Ke Lok Po v. Stainback, 74 F. Supp. 852, 858 (D. Hawaii 1947), *rev'd on other grounds,* 336 U.S. 368 (1949).

[94] Stainback v. Mo Hock Ke Lok Po, 336 U.S. 368 (1949). The Court held that no direct appeal could be made from the United States District Court for Hawaii to the Supreme Court but that the lower court's decision was reviewable by the court of appeals. *Id.* at 380.

[95] Ch. 31, ser. A-55, Act 72, [1949] Laws of the Territory of Hawaii Reg. Sess. 100 provided that no child who had not graduated from the second grade in a public school or its equivalent might be taught a foreign language in any school for more than five hours (including assigned homework) per calendar week. School officials retained the right to visit the

In the Philippines there was no national language, and no one language was used by the majority of the inhabitants.[97] Under the rule of Spain, Spanish had been declared the official language; but after the acquisition of the Philippines by the United States, the federal government added English as another official language. A literacy test for voting was imposed, but that test could be met by a knowledge of Spanish, English, or a native language.[98] In the area of education, however, where not only the existing usage but also the future course of language is determined, no such bilingualism was accepted. English was officially adopted as the language of instruction in the public school system.[99] In 1934, the United States granted the Philippine Islands independence, the grant to become effective ten years later. Despite this envisioned break, the United States insisted that in the interim ten years the public schools of the Commonwealth of the Philippines continue to conduct their instruction in the English language.[100]

Although the territory of Puerto Rico was not necessarily destined to be a state of the Union, Congress and the executive branch insisted on the use of English in the island's school system and in its legal tribunals. Within a year after the acquisition of Puerto Rico, the United States officially established English, together with Spanish, as the official language of the island.[101] Further, the legislature and the judiciary were directed to publish their laws[102] and opinions[103] in both languages, while public and private documents were valid whether expressed in English or Spanish.[104]

Other laws passed prior to the recognition of Puerto Rican independence, when the federal government effectively controlled local Puerto Rican affairs, betrayed this official bilingual posture and accorded a favored role to English. Since bills actually signed by the governor were in English, the English text was to be examined in cases of discrepancy between the English and Spanish versions of the law.[105] Proceedings in the United States District Court for the District of Puerto Rico also had to be conducted in English.[106]

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schools, and the Department of Public Instruction continued to receive copies of textbooks used in the curriculum.

[96] As of May, 1966, there were eighty-eight private Japanese-language schools in the state of Hawaii attended by 12,592 students, and three Chinese-language schools. They all meet after regular school hours. Letter from Yukio Oyama to Arnold H. Leibowitz, Nov. 12, 1966.

[97] J. Hayden, The Philippines: A Study in National Development 583-603 (1942).

[98] Act of August 29, 1916, ch. 416, § 15(c), 39 Stat. 549.

[99] Phil. Ann. L. Administrative Code, tit. 16 § 922 (1958).

[100] Act of March 24, 1934, ch. 84, 48 Stat. 456.

[101]
> In all the departments of the Commonweath Government and in all the courts of this island, and in all public offices the English language and the Spanish language shall be used indiscriminately; and, when necessary, translations and oral interpretations shall be made from one language to the other so that all parties interested may understand any proceedings or communications made therein.

P.R. Laws Ann. tit. 1, § 51 (1965). *See generally* Garcia Martinez, *Idioma y Derecho en Puerto Rico,* 21 Rev. C. Abo. P.R. 183 (1960).

[102] P.R. Laws Ann. tit. 2, § 223 (1965).

[103] P.R. Laws Ann. tit. 4, § 489 (Supp. 1968).

[104] P.R. Laws Ann. tit. 1, § 53 (1965). Competent interpreters and translators were required to be employed by "all departments and the courts" to carry out the purposes of the statutes providing for such bilingualism. P.R. Laws Ann. tit. 1, § 52 (1965).

[105] *See, e.g.,* Cruz v. Dominguez, 8. P.R.R. 551 (1905).

[106] 48 U.S.C. § 864 (1964). As a consequence, any juror serving in the federal court had to have a sufficient knowledge of the English language to enable him to serve as a juror. Act of June 25, 1906, ch. 3542, 34 Stat. 466.

The federal government attempted to introduce English into the Puerto Rican school system very rapidly. After a brief period (1900-1903) when the elementary schools were taught in Spanish and the secondary schools in English, the attempt was made (1903-14) to impose English as the sole medium of instruction at all school levels.[107] When this proved impractical, the policy was modified — still with the view, however, of maximizing the use of English as the language of instruction in the public schools.[108]

Moreover, Congress has generally imposed some English language requirement prior to an area's statehood.[109] After acquisition of local control, however, the new states with large non-English-speaking elements have uniformly moved to deemphasize English and to encourage or permit the foreign language. Thus New Mexico, despite the enabling act imposing various English language requirements on local officials, indicated its intention to foster the continued use of Spanish in addition to English.[110] It even required the ballots for the ratification of its constitution to be printed in both Spanish and English,[111] while the laws of its legislature were to be published in both languages for twenty years following the ratification of its constitution.[112] Further, even as the New Mexico constitution was requiring that English be the language of instruction in that state's schools (the enabling act demanded this),[113] that same constitution provided for the training of teachers in Spanish to teach Spanish-speaking pupils.[114]

We have already seen that when Hawaii became a state in 1959, the troublesome federal law regulating private foreign-language schools was dropped. At the same time, the statutory mandate that the "English language shall be the medium and basis for instruction in all private schools . . . ."[115] was repealed.[116]

In Louisiana, the record after statehood is equivocal. The early Louisiana constitutions provided that the constitution and statutes should be promulgated both in English and French notwithstanding the enabling act requirement that all government records be in English.[117] This bilingual publication, however, is no longer required,[118] and now legal notices need only be published in English.[119] Other provisions of Louisiana law also emphasize English: juror qualifications are based on English literacy;[120] judicial and other legal notices must be in English in all parishes of the state, including Orleans;[121] and various business records must be kept in English.[122] Most important, instruction in public schools must be conducted in English.[123] On the other hand, Louisiana still officially recognizes, to a degree, the use of French: the Louisiana constitution provides that a candidate for office, or a voter, must be able to read and write the English language or his mother tongue;[124] and every contract executed in French is declared as valid as if it had been made in English.[125]

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[107] J. Osuna, A History of Education in Puerto Rico 343-50 (1949).

[103] From 1917 to 1934 Spanish was the medium of instruction in the first four grades. The fifth grade was a transition grade with some subjects taught in Spanish and some taught in English. From the sixth grade on, the medium of instruction was English. *Id.* at 350. In the following years, until 1945 when education policy was placed in the hands of local officials, the problem of language instruction in the school system was a volatile political issue in Puerto Rico, as the federal government pressed for some recognition of English despite local resistance. *Id.* at 365-97.

[109] The laws passed, the records preserved, and the judicial and legislative written proceedings in Louisiana were required to be in English. Act of Feb. 20, 1811, ch. 21, § 3, 2 Stat. 642. The schools in Oklahoma, New Mexico, and Arizona were to be conducted in English. Act of June 16, 1906, ch. 3335, § 3, 34 Stat. 270; Act of June 20, 1910, ch. 310, §§ 2, 20, 36 Stat. 559, 570. English literacy was made a requirement for all "state officers and members of the state legislature" in New Mexico and Arizona. Act of June 20, 1910, ch. 310, §§ 2, 20, 36 Stat. 559, 570. In the case of California and Hawaii, however, where there was a large non-English-speaking population, no such condition was imposed.

[110] In two other states, California and Colorado, Congress approved constitutions that provided for laws to be published in another language besides English. Cal. Const. art. XI, § 21 (1849); Colo. Const. art. XVIII, § 8 (1876).

[111] N.M. Const. art. XII, § 14 (1911).

[112] *Id.* art. XX, § 12 (1911).

[113] *Id.* art. XXI, § 4 (1911).

[114] *Id.* art. XII, § 8 (1911).

[115] Session Laws of 1896, ch. 57, § 30.

[116] Act. 174, § 28, [1965] Laws of Hawaii Reg. Sess. 252.

The Philippine constitutional convention, convening the year following the granting of Philippine independence in 1934,[126] approved the following language: "The National Assembly shall take steps for the development and adoption of a common national language based on one of the existing native languages. Until otherwise provided by law, English and Spanish shall continue as official languages."[127]

In Puerto Rico, after educational policy was placed in the hands of local officials in 1945, Spanish was established as the medium of instruction at all educational levels. English was originally treated as a preferred subject to be taught as a second language, but in recent years English has no longer enjoyed even this preferred status.[128] The official bilingual posture of Puerto Rico, established in 1900, was limited by a recent judicial decision interpreting the statute as only advisory in the case where an attorney wished to address the court in English.[129] Further, the preference given to the English text in cases of discrepancies between laws published in both languages was specifically removed by statute so that, in general, the Spanish text now prevails.[130] Other sections of the Commonwealth's constitution and code reinforce this Spanish-language emphasis. A Spanish literacy test is required of members of the legislative assembly;[131] executive reports in English must be translated into Spanish, although the converse is not required;[132] the rules of the Commonwealth's judiciary require English pleadings to be accompanied by a Spanish translation;[133] and jurors in the Puerto Rican criminal courts must read and write Spanish.[134]

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[117] La. Const. arts. 103, 104, 132 (1845); La. Const. arts. 100, 101, 129 (1852).

[118] The policy of bilingual publication was first modified whereby the state General Assembly *could* provide for the publication of laws in French but that laws had to be published in English. *See* La. Const. arts. 109, 103 (1868); La. Const. art. 165 (1898).

[119] La. Rev. Stat. § 1:52 (1950).

[120] La. Rev. Stat. § 13:3041 (1968); La. Crim. Pro. Code Ann. art. 401 (West 1967).

[121] La. Rev. Stat. § 1:52 (1950); La. Rev. Stat. §§ 43:201, :202, :204 (1950).

[122] La. Rev. Stat. §§ 37:1755, :1864 (1964); La. Rev. Stat. §§ 51:661, :662 (1965); La. Rev. Stat. § 56:501 (1950).

[123] La. Const. art. 12, § 12.

[124] La. Const. art. 8, § 1(c); La. Rev. Stat. § 18:31(3) (1969).

[125] La. Rev. Stat. § 1:51 (1950).

[126] 22 U.S.C. § 1394 (1964).

[127] Phil. Const. art. XIV, § 3. Pursuant to this mandate, President Quezon created the Institute of National Languages in November of 1936. Phil. Ann. L. tit. 30, §§ 268-75 (1956). A year later, the institute recommended the adoption of Tagalog as the national language. Phil. Ann. L. tit. 36, § 10 (1956). In June of 1940, after the printing of a dictionary and grammar by the institute, the national language was required to be taught in all public and private schools of the Philippines and was declared to be the official language of the Philippines, effective July 4, 1946, the day when the Philippines would become an independent nation. Phil. Ann. L. tit. 36, § 11 (1956).

English is still the most commonly used language, but is gradually being overtaken by Tagalog. C. Prator, Language Teaching in the Philippines *passim* (1950).

[128] Special provisions are made for teachers of English. P.R. Laws Ann. tit. 18, § 211 (1961). The Puerto Rican legislature, in its literacy campaign, awards extra compensation to those persons teaching an adult or child outside of normal school hours to read and write Spanish. *Id.* §§ 412-13. In addition, the secretaries of labor and education are authorized to extend the benefits of the adult English program to Puerto Rican workers who seasonally migrate to the United States. *Id.* § 435.

[129] El Pueblo de Puerto Rico, Tribunal Superior de San Juan No. C-63-98 (P.R. Sup. Ct., June 30, 1965).

2. *Early Supreme Court Decisions*

Although, as the above historical review indicates, the federal executive and legislative branches have exercised their prestige and sanction in favor of exclusive English usage, the Supreme Court, in the few cases it has been called upon to decide, has taken a more liberal stance. Nevertheless, the Court has not precisely articulated the amount of discrimination based on English literacy that it will tolerate. As the judicial decisions bearing upon this issue are discussed, two basic legal and policy questions should be kept in mind: (1) how much protection from federal or state English literacy requirements does the Constitution afford? and (2) when, and to what extent, may the federal government override state language requirements?

The leading case in this area, *Meyer v. Nebraska,*[135] made clear that the prohibition or undue inhibition of the use or teaching of a foreign language is an unconstitutional violation of due process.[136] However, it also explicitly assumed, in dicta, that a state statutory requirement of English instruction in public and private schools was permitted by the Constitution.[137]

The case arose when, after World War I, Nebraska and a number of other states passed statutes inhibiting the teaching of foreign languages. The Nebraska statute was quite simple:

> Section 1. No person, individually or as a teacher, shall, in any private, denominational, parochial or public school, teach any subject to any person in any language other than the English language.
>
> Section 2. Languages, other than the English language, may be taught as languages only after a pupil shall have attained and successfully passed the eighth grade . . . .[138]

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[130] P.R. LAWS ANN. tit. 31, § 13 (1967). Similarly, "[p]ublic instruments shall be drawn up in the Spanish language, but may be in English, provided the notary, the parties, and the witnesses, if required or solicited . . . know said language." P.R. LAWS ANN. tit. 4, § 1017 (1965). *Cf.* P.R. LAWS ANN. tit. 1, § 53 (1965).

[131] P.R. CONST. art. 111, § 5. *See also* P.R. LAWS ANN. tit. 16, § 857 (Supp. 1968).

[132] P.R LAWS ANN. tit. 3, § 941 (1965).

[133] P.R.R. CIV. PRO. 8.5.

[134] P.R.R. CRIM. PRO. 96.

[135] 262 US. 390 (1923).

[136] *Id.* at 403.

[137] *Id.* at 402.

[138] Ch. 249, §§ 1-2 [1919] Laws of Nebraska 1019. Similar legislation prohibiting teaching in foreign languages was passed in 1919 by fourteen other states: Alabama, Arkansas, Colorado, Delaware, Idaho, Illinois, Iowa, Kansas, Michigan, Minnesota, Nevada, New Hampshire, Oklahoma, and Oregon. E. HARTMANN, THE MOVEMENT TO AMERICANIZE THE IMMIGRANT 237-53 (1948).

The Court, Mr. Justice McReynolds writing the opinion (as he did for all the language cases arising in the twenties), held the statute unconstitutional:

> It is said the purpose of the legislation was to promote civic development by inhibiting training and education of the immature in foreign tongues and ideals before they could learn English and acquire American ideals; and "that the English language should be and become the mother tongue of all children reared in this State." It is also affirmed that the foreign born population is very large, that certain communities commonly use foreign words, follow foreign leaders, move in a foreign atmosphere, and that the children are thereby hindered from becoming citizens of the most useful type and the public safety is imperiled.
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> . . . The protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution — a desirable end cannot be promoted by prohibited means.
>
> The desire of the legislature to foster a homogeneous people with American ideals prepared readily to understand current discussions of civic matters is easy to appreciate. Unfortunate experiences during the late war and aversion toward every characteristic of truculent adversaries were certainly enough to quicken that aspiration. But the means adopted, we think, exceed the limitations upon the power of the State and conflict with rights assured to plaintiff in error. The interference is plain enough and no adequate reason therefor in time of peace and domestic tranquillity has been shown.
>
> The power of the State to compel attendance at some schools and to make reasonable regulations for all schools, *including a requirement that they shall give instructions in English, is not questioned.* Nor has challenge been made of the State's power to prescribe a curriculum for institutions which it supports. . . . Our concern is with the prohibition approved by the Supreme Court. . . . No emergency has arisen which renders knowledge by a child of some language other than English so clearly harmful as to justify its inhibitions . . . . We are constrained to conclude that the statute as applied is arbitrary and without reasonable relation to any end within the competency of the State.[139] (Emphasis added.)

Justices Holmes and Sutherland would have upheld the state legislation, although they would have struck down a statute aimed specifically at one foreign language. Their dissent in the related cases[140] was based upon a recognition of the unifying role of English in the United States and the constitutionality of state statutes directed at fostering this end:

> We all agree, I take it, that it is desirable that all the citizens of the United States should speak a common tongue, and therefore that the end aimed at by the statute is a lawful and proper one. . . . I cannot bring my mind to believe that in some circumstances, and circumstances existing it is said in Nebraska, the statute might not be regarded as a reasonable or even necessary method of reaching the desired result.[141]

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[139] Meyer v. Nebraska, 262 U.S. 390, 401-3 (1923).

[140] Bartels v. Iowa, 262 U.S. 404, 412 (1923) (dissenting opinion).

[141] *Id.*

Later, the attempted restriction on private foreign-language schools in the then Territory of Hawaii, discussed above, was litigated. The district court, affirmed by the Ninth Circuit, granted a preliminary injunction against enforcement of the territorial legislation in *Farrington v. Tokushige.*[142] The language of the appeals court followed closely the theme of Mr. Justice McReynolds's opinion in the *Meyer* case:

> An attempt is made to justify the act, however, because of the peculiar conditions prevalent on the Islands. They have a large Japanese population there, and it is said that within the next 15 years a majority of the electorate will be American citizens of Japanese extraction. It is further said that the Japanese do not readily assimilate with other races; that they still adhere to their own ideals and customs, and are still loyal to their emperor. It is a matter of common knowledge that the Japanese do not readily assimilate with other races, and especially with the white race. This is in part a matter of choice and in part a matter of necessity, because one cannot assimilate alone. No doubt the Japanese tongue will be spoken on the Islands for generations to come, and no doubt the Japanese will be slow to give up their customs and their ideals; but we took the Islands cum onere and extended the Constitution of the United States there, and every American citizen has a right to invoke its protection. You cannot make good citizens by oppression, or by a denial of constitutional rights, and we find no such conditions there as will justify a departure from the fundamental principles of constitutional law.[143]

The Supreme Court affirmed this decision, observing that:

> The school Act and the measures adopted thereunder go far beyond mere regulation of privately-supported schools . . . . They give affirmative direction . . . . Enforcement of the Act probably would destroy most, if not all, of them . . . . The Japanese parent has the right to direct the education of his own child without unreasonable restrictions; the Constitution protects him as well as those who speak another tongue.[144]

To sum up, in the area of school regulation, the Supreme Court in these two early cases had (1) stated its view that requiring the language of instruction be English in a state or territory of the United States was constitutional, but (2) held that restriction of complementary or supplementary secondary language efforts by various ethnic groups was unconstitutional. The Court did not eliminate the possibility of some regulation of foreign language instruction but did indicate its distaste for this type of state restriction.

In the only other case raising the language issue to reach the Supreme Court before the recent voting rights cases, *Yu Cong Eng v. Trinidad,*[145] the Court touched upon the reasonableness of English literacy as a condition of operating a given business. The Philippine legislature had passed what was popularly known as the Chinese Bookkeeping Act. The Act made it unlawful for any person or business entity in the Philippines to keep its account books in a language "other than English, Spanish, or any local dialect." The appellant was a Chinese merchant who argued that the Act would effectively drive him, as well as 12,000 other Chinese merchants out of business. Collectively these Chinese accounted for sixty percent of the merchandising business in the Philippine Islands. The Philippine government argued that the law was primarily a tax measure reasonably designed to permit the effective collection of taxes. In an effort to sufficiently restrict the statute so that its constitutionality could be upheld, the Philippine court interpreted the Act as requiring *some* books — those necessary for tax collection — to be kept in Spanish, English, or local dialect, thus permitting the Chinese merchant to keep his primary books in Chinese. The Supreme Court, unwilling to passively defer to the local court's interpretation, preferred to read the statute for itself. The Court interpreted the statute as a complete prohibition on books in languages other than Spanish, English, or a local dialect, and therefore held the law unconstitutional. Its holding was limited, however, to the Philippine Islands and their complicated racial situation:

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[142] *See* Farrington v. Tokushige, 11 F.2d 710, 713 (9th Cir. 1926), *aff'd,* 273 U.S. 284 (1927).

[143] Farrington v. Tokushige, 11 F.2d 710, 714 (9th Cir. 1926), *aff'd,* 273 U.S. 284 (1927).

[144] Farrington v. Tokushige, 273 U.S. 284, 298 (1927). *See also* Mo Hock Ke Lok Po v. Stainback, 74 F. Supp. 852 (D. Hawaii 1947), *rev'd on other grounds,* 336 U.S. 368 (1949).

[145] 271 U.S. 500 (1926).

> In view of the history of the Islands and of the conditions there prevailing, we think the law to be invalid, because it deprives Chinese persons — situated as they are, with their extensive and important business long established — of their liberty and property without due process of law, and denies them the equal protection of the laws.[146]

In all of these early rulings, the Supreme Court emphasized the extent or consequences of the challenged regulation of language. In *Meyer,* the prohibition of the statute was absolute; in *Farrington* the Court characterized the regulation of private-language schools as stringent enough "to probably destroy" them; and in *Yu Cong Eng* the Philippine statute as read by the Court would have deprived a multitude of persons of their businesses. By approaching these early cases this way, the Court left open the possibility that milder forms of regulation could be sustained.[147]

III. English Literacy as a Condition of Voting

It was not until thirty years later that the Supreme Court decided another series of cases involving English literacy — this time in relation to the right to vote. In *Schnell v. Davis*[148] the Court affirmed without opinion a lower court decision holding unconstitutional an Alabama constitutional provision requiring a citizen to "understand and explain" an article of the federal Constitution as a condition of suffrage.[149] The lower court avoided the language issue and held that "[t]he legislative setting of that provision and the great discretion it vested in the registrar made clear that a literacy requirement was merely a device to make racial discrimination easy."[150]

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[146] *Id.* at 524-25.

[147] In Pierce v. Society of Sisters, 268 U.S. 510 (1925), the Supreme Court, in declaring unconstitutional the Oregon Compulsory Education Act of 1922 (which required children between the ages of eight and sixteen to go to public schools), found that:

> The inevitable practical result of enforcing the Act under consideration would be destruction of appellees' primary schools, and perhaps all other private primary schools for normal children within the State of Oregon. These parties are engaged in a kind of undertaking not inherently harmful, but long regarded as useful and meritorious. Certainly there is nothing in the present records to indicate that they have failed to discharge their obligations to patrons, students or the State. And there are no peculiar circumstances or present emergencies which demand extraordinary measures relative to primary education. *Id.* at 534.

[148] 336 U.S. 933, *aff'g* 81 F. Supp. 892 (S.D. Ala. 1949).

In 1959, in *Lassiter v. Northampton Election Board*,[151] the Supreme Court met the language issue squarely and upheld a North Carolina statute requiring the prospective voter to "be able to read and write any section of the Constitution of North Carolina in the English language."[152] The reasoning of Mr. Justice Douglas, who wrote the opinion for a unanimous Court, was that "[t]he ability to read and write . . . has some relation to standards designed to promote intelligent use of the ballot. Literacy and illiteracy are neutral on race, creed, color and sex . . . ."[153] The opinion cited the fact that nineteen states had some kind of literacy test as a condition of voting — apparently if that many states did it, it must be reasonable.[154] The Court cautioned that it would strike down an English literacy test employed to perpetuate discrimination; but since no such charge was before the Court, the statute was sustained as constitutional on its face. There was no discussion of the earlier cases mentioned above, nor was the "legislative setting" of the North Carolina statute considered. The Court cited its previous decisions upholding the constitutionality of other voting qualifications (e.g., age, residence, previous criminal record), and a Massachusetts case of the "last century," *Stone v. Smith*,[155] which, according to the *Lassiter* Court, expressed the opinion "that a literacy test [is] designed to insure an 'independent and intelligent' exercise of the right of suffrage."[156]

The problem with the *Lassiter* opinion was that it postulated a totally unreal situation: a neutral English literacy test. In fact, as we shall see, English literacy tests were formulated with the very purpose of discriminating against a particular group clearly identified by race, religion or country of origin. In the cases following *Lassiter* the Court would discover the racial character of the English literacy suffrage requirements which proliferated throughout the South beginning in the 1890's. What it would not see was that these English literacy restrictions were part of a more extensive discriminatory pattern, developed in the 1890's throughout the nation, of using English literacy requirements to restrict the participation of various religious and racial groups in the life of the country.[157]

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[149] ALA. CONST. amend. 181 (1946).

[150] This was the Supreme Court's subsequent interpretation of *Schnell* in Lassiter v. Northampton Election Bd., 360 U.S. 45, 53 (1959).

[151] 360 U.S. 45 (1959).

[152] *Id.* at 53-54. *See also* Williams v. Mississippi, 170 U.S. 213 (1898), where the Court, in dicta, upheld the Mississippi literacy requirement, finding that the administration of the requirement did not discriminate.

[153] Lassiter v. Northampton Election Bd., 360 U.S. 45, 51 (1959).

[154] *Id.* at 52-53 n.7.

[155] 159 Mass. 413, 34 N.E. 521 (1893).

[156] Lassiter v. Northampton Election Bd., 360 U.S. 45, 52 (1959).

[157] The relation between southern anti-Negro legislation and state legislation affecting other religious and racial groups is discussed in J. HIGHAM, *supra* note 43, at 166-69. The most thorough exploration of southern anti-Negro suffrage legislation is in UNITED STATES

United States v. Mississippi[158] and *Louisiana v. United States*[159] brought the southern legislative pattern officially to the Court's attention. Both states required English literacy as a prerequisite to voting; in later years this was coupled with a requirement of "interpreting" and "understanding" the state constitution. This time the Supreme Court examined the origins of these educational requirements at some length before holding (1) that the fourteenth and fifteenth amendments gave a right of action in the *Mississippi* case,[160] and (2) that the interpretation test in the *Louisiana* case also violated the fourteenth and fifteenth amendments because "as written and as applied, [it] was part of a successful plan to deprive Louisiana Negroes of their right to vote."[161] Justice Harlan separately concurred in both cases, noting his view that federal power in these cases stemmed only from the fifteenth amendment — a more restrictive view which would become important in subsequent cases.

The Court did not indicate whether a more objectively designed test — such as had been sustained in *Lassiter*, where the requirement was to "read and write" rather than to "understand" or "interpret" a state constitutional provision[162] — would have been valid though enacted to effect racial discrimination. The Mississippi provision as originally adopted in 1890 (and which served as the model for other English literacy statutes in the South) raised exactly such a question; for the Mississippi constitutional delegates were quite aware that sixty percent of the state's Negroes, but only ten percent of the whites, could not read English.[163]

The Voting Rights Act of 1965 was passed to meet this pattern of Southern anti-Negro suffrage legislation which the courts had been struggling with on a case-by-case basis. The Act suspended literacy tests and other educational prerequisites to voting in any state or political subdivision where they were in force and less than fifty percent of the eligible voters had registered or voted in the 1964 presidential election. The federal ban could be lifted if the state or county could prove that it had not employed such tests with a discriminatory purpose or effect. The extensive hearings on the Act were largely limited to the problem of discrimination in the administration of these tests in the South, and it was expected that the force of the Act would be to permit "millions of non-white Americans . . . to participate for the first time on an equal basis in the govern-

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COMMISSION ON CIVIL RIGHTS, REPORT ON VOTING (1961). Unfortunately this report, like the hearings on the subsequent Voting Rights Act of 1965, confined itself to problems of Negro suffrage in the South. *See Hearings on H.R. 6400 Before Subcomm. No. 5 of the House Comm. on the Judiciary,* 89th Cong., 1st Sess., ser. 2 (1965); *Hearings on S. 1564 Before the Senate Comm. on the Judiciary,* 89th Cong., 1st Sess. pts. 1 & 2 (1965).

[158] 380 U.S. 128 (1965).

[159] 380 U.S. 145 (1965).

[160] United States v. Mississippi, 380 U.S. 128, 140 (1965).

[161] Louisiana v. United States, 380 U.S. 145, 151 (1965).

[162] See note 152 *supra*, and accompanying text.

[163] *See generally* UNITED STATES COMMISSION ON CIVIL RIGHTS, VOTING IN MISSISSIPPI 2-6 (1965). The Supreme Court was to note this fact and give it considerable prominence in sustaining federal legislation. South Carolina v. Katzenbach, 383 U.S. 301, 311 (1966). The lower court opinion in *Louisiana v. United States,* which had painstakingly examined the legislative history of the Louisiana voting requirements, had been careful to distinguish the Louisiana statute from the simple "read and write" statute that had been held valid in *Lassiter.* Louisiana v. United States, 225 F. Supp. 353, 356, 385-86 (E.D. La. 1963), *aff'd* 380 U.S. 145 (1965).

ment under which they live,"[164] although by its terms the Act applied to some northern states as well.[165]

In *South Carolina v. Katzenbach,*[166] the Supreme Court upheld the key

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164 South Carolina v. Katzenbach, 383 U.S. 301, 337 (1966).

165 Alaska, three counties in Arizona, one county in Hawaii, and one county in Idaho were covered by the Act. Consent judgments (agreed to by the attorney general) excluding these jurisdictions were obtained under section 4(a) of the Act on the grounds that the tests have not been used to discriminate on the basis of race or color during the five years preceding the filing of the action. The Navajo tribe objected without avail to the attorney general's consent. In Alabama, Georgia, Louisiana, Mississippi, South Carolina, Virginia, and forty counties in North Carolina the Act went into effect and the tests were suspended. The attorney general refused a consent judgment to permit North Carolina to remove itself from coverage of the Act. UNITED STATES COMMISSION ON CIVIL RIGHTS, POLITICAL PARTICIPATION 11 (1968).

Gaston County, North Carolina, sought to reinstate the North Carolina voting literacy test that had been suspended in the county under the Voting Rights Act of 1965. Under section 4(a) of the Act, the county bore the burden of proving that the test had not "been used during the [preceding] five years . . . for the purpose or with the effect of denying or abridging the right to vote on account of race or color." Voting Rights Act of 1965 § 4(a), 42 U.S.C. § 1973b (a) (Supp. III, 1968). Gaston County, however, had traditionally maintained a segregated and inferior school system for Negroes, so that Negro voters who attempted to pass a literacy test were placed at a marked disadvantage and thus effectively disenfranchised. A three-judge panel of the United States District Court for the District of Columbia denied the declaratory relief sought by the county on the ground that the school system was segregated and that the Negro schools were *clearly proven by evidence in the case* to be so grossly inferior that the ability of Negroes educated in the county's schools to pass a literacy test was significantly prejudiced. Gaston County, North Carolina v. United States, 288 F. Supp. 678 (D.D.C. 1968), *aff'd* 395 U.S. 285 (1969). On appeal to the Supreme Court the decision was affirmed on substantially the same grounds. Thus, as the Court read the lower panel's decision,

> a State or subdivision may demonstrate that although its schools suffered from the inequality inherent in any segregated system, see Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), the dual educational system had no appreciable discriminatory effect on the ability of persons of voting age to meet a literacy requirement. Gaston County, North Carolina v. United States, 395 U.S. 285, 291 (1969).

This interpretation is reinforced by the Court's repeated use of the phrase "separate and inferior" or "segregated and unequal school systems." *Id.* at 287, 293 & n.9, 295.

Attorney General Mitchell, arguing for a *nationwide* ban on literacy tests, has offered some valuable observations on the *Gaston County* case:

> The Supreme Court appeared to tell us in the *Gaston County* case that any literacy test would probably discriminate against Negroes in those States which have, in the past, failed to provide equal educational opportunities for all races.
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> Many Negroes, who have received inferior educations in these States, have moved all over the Nation.
>
> The Bureau of the Census estimates that, between 1940 and 1968, net migration of nonwhites from the South totaled more than four million persons. . . . Certainly, it may be assumed that part of that migration was to those northern and western States which employ literacy tests now or could impose them in the future. As was true in *Gaston County,* the effect of these tests is to further penalize persons for the inferior education they received previously. For example, in the South, 8.5 percent of the white males over 25 have only a fourth-grade education as opposed to 30 percent for Negro males. . . .
>
> Thus, following the Supreme Court's reasoning, it would appear inequitable for a State to administer a literacy test to such a person because he would still be under the educational disadvantage offered in a State which had legal segregation.
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> Furthermore, the Office of Education studies and Department of Justice lawsuits have alleged that areas outside of the South have provided inferior education to minority groups. Following the general reasoning of the Supreme Court in the *Gaston County* case, I believe that any literacy test given in any State to a person who has received an inferior public education would be unfair.
>
> Unfortunately, the statistics appear to support this argument. . . . Thus, inferior education for minority groups is not limited to any one section of the country.

Hearings on H.R. 4249, H.R. 5538, and Similar Proposals Before Subcomm. No. 5 of the House Comm. on the Judiciary, 91st Cong., 1st Sess., ser. 3, at 223-24 (statement of Attorney General Mitchell).

166 383 U.S. 301, 334 (1966).

portions of the Voting Rights Act, which permitted the suspension of literacy tests where past performance indicated discriminatory administration of the test. The Act in its preamble indicates that it was passed "to enforce the Fifteenth Amendment of the Constitution and other purposes,"[167] and the Court agreed that the Constitution gave a sufficient basis for the Act in the second section of the fifteenth amendment: "The Congress shall have power to enforce this article by appropriate legislation." In addition, the Supreme Court emphasized that it was not the tests themselves, but their discriminatory application, which gave rise to the congressional action banning the tests for five years in the future after a finding of discrimination:

> The Act suspends literacy tests and similar devices for a period of five years from the last occurrence of substantial voting discrimination. This was a legitimate response to the problem, for which there is ample precedent in Fifteenth Amendment cases. . . . Underlying the response was the feeling that States and political subdivisions which had been allowing white illiterates to vote for years could not sincerely complain about "dilution" of their electorates through the registration of Negro illiterates. Congress knew that continuation of the tests and devices in use at the present time, no matter how fairly administered in the future, would freeze the effect of past discrimination in favor of unqualified white registrants.[168]

These southern cases were relatively easy. The pattern of administrative discrimination was being systematically exposed by government agencies such as the United States Civil Rights Commission and the Department of Justice, and by various congressional committees. These advocates were capable and experienced in the voting problems of the South. Section 4(e) of the Voting Rights Act, on the other hand, applied equally to the world outside the South — where discrimination in administration of tests could not be easily proved, if proved at all; where the origin, "the legislative setting," of the literacy test was more difficult to discover; where advocates were often inexperienced and the government considerably less interested.

Section 4(e) of the Voting Rights Act of 1965, introduced by Senator Robert Kennedy of New York and supported by Senator Jacob Javits,[169] provided that

> No person who demonstrates that he has successfully completed the sixth primary grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language . . . .[170]

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[167] Act of Aug. 6, 1965, Pub. L. No. 89-110, 79 Stat. 437.

[168] South Carolina v. Katzenbach, 383 U.S. 301, 334 (1966).

[169] 111 CONG. REC. 11027 (1965).

[170] Voting Rights Act of 1965 § 4, 42 U.S.C. § 1973b(e)(1) (Supp. III 1968). A broader exception for those literate in Spanish but not English was found in the Mansfield-Dirksen bill introduced in 1962. S. 2750, 87th Cong., 2d Sess. (1962). *See also* UNITED STATES COMMISSION ON CIVIL RIGHTS, REPORT ON VOTING (1961). The commission recommended federal legislation either: (1) limiting state voting requirements to citizenship, residence, confinement at the time of registration or election, age, or conviction of a felony; or, (2) regard-

Since Puerto Rico is the only covered area "in which the predominant classroom language was other than English . . . ," the statute was clearly directed to the Puerto Rican immigrant,[171] who, in many cases, could not vote because of legal restrictions such as the 1922 New York constitutional amendment providing that no person could vote unless able "to read and write English."[172]

The constitutionality of section 4(e) was tested in two cases arising in New York — *Morgan v. Katzenbach*[173] and *United States v. County Board of Elections*.[174] The plaintiffs in the *Morgan* case were voters in the state of New York who argued that section 4(e) diluted their votes[175] and was beyond the power of Congress to enact, since the power to set nondiscriminatory voter qualification tests was reserved to the states. The United States District Court for the District of Columbia, sitting as a three-judge court, accepted the plaintiffs' position and, over the dissent of one judge, declared the section unconstitutional.[176]

In *United States v. County Board of Elections,* the federal government applied for a temporary restraining order against the full application of the New York state constitution's literacy requirement and an order requiring the board of elections to register all persons who could qualify as voters under section 4(e). The United States District Court for the Western District of New York, sitting as a three-judge court, unanimously sustained the government's position and, contrary to the District of Columbia court's ruling, upheld the constitutionality of section 4(e).[177] The decision, however, was limited to Puerto Ricans. The district court sustained the exercise of congressional power in this situation on the basis of the territorial clause[178] and the fourteenth amendment:

> We conclude, therefore, that because of the sui generis circumstances present in the instant case, Congress could correct, under its general Fourteenth Amendment powers, that which tended to dilute and frustrate a course and policy it had deliberately followed for so long, in upgrading the

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ing evidence of a sixth-grade education as sufficient to qualify under a literacy test. *Id.* at 139-41. The commission, because of the doubtful constitutionality of such a provision, left open the question of a sixth-grade education in Spanish satisfying its second recommendation. *See generally,* Bernhard, *The Federal Fact-Finding Experience — A Guide to Negro Enfranchisement,* 27 LAW & CONTEMP. PROB. 468, 479 (1962); Maggs & Wallace, *Congress and Literacy Tests: A Comment on Constitutional Power and Legislative Abrogation,* 27 LAW & CONTEMP. PROB. 510, 533 (1962); Note, *Negro Disenfranchisement — A Challenge to the Constitution,* 47 COLUM. L. REV. 76, 94-97 (1947); Note, *Validity of Electoral Qualifications Under 14th and 15th Amendments,* 49 COLUM. L. REV. 1144 (1949).

[171] The Court's opinion in Katzenbach v. Morgan, 384 U.S. 641 (1966), pointed out that *Morgan* presently affects only citizens educated in Puerto Rico and now residing in the States. *Id.* at 658. The scope of Cardona v. Power, 384 U.S. 672 (1966), however, is not as well defined, and its ramifications are much broader.

[172] N.Y. CONST. art. 11, § 1 (1922).

[173] 384 U.S. 641 (1966).

[174] 248 F. Supp. 316 (W.D.N.Y. 1965).

[175] The alleged dilution may have been reflected in the 1965 New York city elections, in which Herman Badillo, a Puerto Rican, was elected President of the Borough of the Bronx by a 2,086-vote margin. N.Y. Times, Nov. 27, 1965, at 22, col. 2. The New York City Board of Elections reported that 8,107 persons had voted as a result of the section 4(e) elimination of the English literacy requirement — 4,023 of these resided in the Bronx. N.Y. Times, Nov. 16, 1965, at 38, col. 1.

[176] Morgan v. Katzenbach, 247 F. Supp. 196, 204 (D.D.C. 1965), *rev'd,* 384 U.S. 641 (1966).

[177] United States v. County Bd. of Elections, 248 F. Supp. 316, 323 (W.D.N.Y. 1965).

[178] "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States . . . ." U.S. CONST. art. IV, § 3.

> people of the Island of Puerto Rico to full and complete American citizenship.
>
> In so ruling, we are not unmindful that a three-judge District Court for the District of Columbia has decided the question before us to the contrary. But, we are unaware of any precedental authority for its holding that the power of Congress to legislate for a territory does not embrace authority, under the Fourteenth Amendment, to confer "additional rights on citizens of the territory when they migrate to other parts of the United States." . . . Rather, we are persuaded by the logic of Circuit Judge McGowan's dissenting opinion, setting forth the fundamental concept that to the extent this Congressional exercise of power "may perhaps operate to place citizens of differing national origins in differing positions, vis-à-vis the right to vote, the answer is that citizens within the reach of the constitutional grant of power over the territories are inescapably and legitimately separated by that fact from citizens to whom it has never extended."[179]

Of these two cases, only *Morgan* was carried to the Supreme Court where, Justices Harlan and Stewart dissenting, the Court held section 4(e) constitutional. The Court found congressional authority to enact this section in "the powers granted to Congress by § 5 of the Fourteenth Amendment," explicitly not deciding whether any other grounds for this enactment were available.[180] The Court held that section 4(e) was within the federal enforcement powers of the fourteenth amendment since Congress might decide that the application of New York's English literacy requirement in order to deny the vote to a person with a sixth grade education in Puerto Rico's schools constituted an invidious discrimination in violation of the equal protection clause.[181] The Court confined its examination to whether there could have been any factual basis to sustain such a congressional judgment. It referred only briefly to the sociological data — which had been discussed at some length by the lower courts[182] — in citing the existence of Spanish newspapers, radio broadcasts, and television programs in New York. These could provide a possible basis for congressional judgment that an English literacy test is no longer necessary to assure an informed electorate, but now acts primarily as unnecessary discrimination.[183] Also, the Court stressed the importance which the Congress could have attached to the right to vote — a right vital to Puerto Ricans seeking equal participation in other areas of public life:

> More specifically, § 4(e) may be viewed as a measure to secure for the Puerto Rican community residing in New York nondiscriminatory treatment

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[179] United States v. County Bd. of Elections, 248 F. Supp. 316, 323 (W.D.N.Y. 1965).

[180] Katzenbach v. Morgan, 384 U.S. 641, 646-47 (1966).

[181] *Id.* at 654-56.

[182] The lower courts had discussed congressional policy with respect to education in Puerto Rico and the recent Puerto Rican migration to the continental United States. They noted that these migrations were different from the earlier Italian and Jewish migrations because of the possibility that Puerto Rican migrants would frequently return to Puerto Rico and because Puerto Rico is part of the United States. The lower courts noted also that the Puerto Ricans' plight stemmed in part from the congressional policy that encouraged the use of Spanish in Puerto Rico, and in part from the fact that states often prevented the Puerto Rican immigrant from integrating into the mainstream of American life because of his inability in English. *See, e.g.,* United States v. County Bd. of Elections, 248 F. Supp. 316, 319-23 (W.D.N.Y. 1965).

[183] Katzenbach v. Morgan, 384 U.S. 641, 655 (1966).

> by government — both in the imposition of voting qualifications and the provision or administration of governmental services, such as public schools, public housing and law enforcement.
>
> . . . This enhanced political power will be helpful in gaining nondiscriminatory treatment in public services for the entire Puerto Rican community.[184]

The Court specifically left open any extension of the principle to persons educated in non-American-flag schools.[185]

Cardona v. Power carried the problem one step further. In this case, which arose prior to the enactment of section 4(e) but which was heard by the Supreme Court after the Act had been passed, the appellant, literate in Spanish but not in English, challenged the New York state English literacy test as violative of due process and equal protection. The Supreme Court could not determine from the record before it whether the appellant had completed the sixth grade in Puerto Rico and, thus, was covered by section 4(e) and the *Morgan* decision. If so, of course, the case was simple. The Court, therefore, remanded for fuller development of the record. But the Court went further and questioned whether — even if it should be found that appellant was not within the coverage of section 4(e) — New York would wish to continue its English literacy requirements in view of the existence of the section.[186]

Justices Douglas and Fortas, dissenting from the refusal of the Court to decide the case, felt there was no rational basis — considering the importance of the right at stake — for denying the franchise to those with equivalent qualifications. They would have given the appellant, quite apart from any federal legislation, a constitutional right to vote in New York on a parity with an English-speaking citizen — either by providing a Spanish literacy test in her case in place of the English one, or by a certificate showing completion of the sixth grade in a school in Puerto Rico.[187] Mr. Justice Douglas, who authored the dissent, noted his personal doubt whether literacy was a useful prerequisite to the exercise of the franchise, but he did not question the state's constitutional right to set such a more limited standard. What he did say was that a literacy test restricted to English was constitutionally unfair since it placed a "heavier burden" on the Spanish-speaking American. He stressed the point, as had the majority opinion in *Morgan,* that the right to vote is a "fundamental matter in a free and democratic society," and for that reason "a far sterner test is required when a law — whether state or federal — abridges" such a right.[188]

Mr. Justice Harlan, in dissenting opinions from the decisions of *Morgan* and *Cardona,* began his analysis with the premise that the states are empowered to prescribe the requisites for voting; he relied on a number of cases (most importantly, the unanimous holding of the *Lassiter* case) in which the Supreme Court had upheld the right of the individual states to set nondiscriminatory voter qualifications. He then questioned the distinction made by Mr. Justice Douglas between fundamental rights and other rights, and supplied the criterion "whether New York has shown that its English-language literacy test is reasonably designed to serve a legitimate state interest."[189] Analyzing first the situation in *Cardona v. Power,* where the appellant was literate in Spanish and lived in a large Spanish-speaking community, Justice Harlan found no arbitrariness in the New York classification. He noted the comparatively limited amount of information available to the non-English-speaking person and the possible desirability from the state's viewpoint of having its electorate understand candidates directly rather than through translation. In *Morgan v. Katzenbach,* where the issue turned on federal power, Mr. Justice Harlan was not disposed to assume (as had the majority) the ***possibility*** of discrimination on the basis of which Congress could have acted. Rather, he pointed out that to sustain the federal enactment there should have been

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[184] *Id.* at 652.

[185] *Id.* at 658.

[186] Cardona v. Power, 384 U.S. 672, 674 (1966). A new draft of the New York constitution eliminated the literacy requirement, but this constitution failed ratification in 1967. The statutory literacy test in New York has been amended to correspond with section 4(e) of the Voting Rights Act of 1965. N.Y. ELECTION LAW § 168 (McKinney Supp. 1968).

The *Cardona* issue will clearly arise once more. The California Rural Legal Assistance Bureau recently brought a similar case testing the California English literacy suffrage test. The test was upheld in a lower court and is being appealed. Castro v. State, No. 917671 (Cal. Super. Ct., Jan. 17, 1968).

[187] Cardona v. Power, 384 U.S. 672, 675-77 (1966) (dissenting opinion).

[188] *Id.* at 677. *See* Comment, 45 NOTRE DAME LAWYER 142, 147-48 (1969) (discussing the applicability of such a "far sterner test" when the right of suffrage is qualified by state law).

> factual data by way of showing that Spanish-speaking citizens are fully as capable of making informed decisions in a New York election as are English-speaking citizens . . . . [or a showing] to support the Court's alternative argument that § 4(e) should be viewed as but a remedial measure designed to cure or assure against unconstitutional discrimination of other varieties, *e.g.,* in "public schools, public housing and law enforcement," . . . to which Puerto Rican minorities might be subject in such communities as New York. There is simply no legislative record supporting such hypothesized discrimination of the sort we have hitherto insisted upon when congressional power is brought to bear on constitutionally reserved state concerns.[190]

Although aware of the deference to be accorded congressional expressions of policy, Mr. Justice Harlan also noted that presumptions of validity were to be accorded state statutes. On the basis of the record, therefore, he would not have sustained the federal statute overruling the state requirement.[191]

The fencing over the legal presumption is of critical importance to the result in these and similar cases. To require documentation that Spanish-speaking citizens are as capable of being informed as English-speaking citizens, or that discrimination exists in public service areas that can be remedied by the vote, may unduly delay or prevent entirely any significant federal action.

It is doubtful that the first proposition is even capable of objective proof. All of the courts that discussed the issue paid some attention to the number of newspapers, radio stations, and television stations that transmitted their information in Spanish.[192] But the courts found the number impressive in absolute terms, or limited relative to the English counterpart, depending upon their view of the main issue. The fact is that such quantitative analysis, taken alone, is not particularly helpful. The general educational level of the population; the quality and content of not only what is transmitted but what is read and absorbed; the quality of the books that are read; the extent and depth of oral discussion in the community, in the foreign language and in English; the number and the role of bilingual individuals as communicators of information in the community — all these must be assessed in order to properly evaluate the knowledge and perception of the foreign-speaking populace. Such an investigation is obviously too extensive to be pursued; even if undertaken, there are no guideposts to permit anything but impressionistic conclusions.

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[189] Katzenbach v. Morgan, 384 U.S. 641, 661 (1966) (dissenting opinion for both *Morgan* and *Cardona*).

[190] *Id.* at 669.

[191] *Id.* at 671.

[192] For a thorough, quantitative analysis of the prevalence of foreign-language media, see Fishman, Hayden, & Warshauer, *The Non-English and the Ethnic Group Press, 1910-1960,* in

The utilization of the vote to remedy discrimination found elsewhere in the operation of governmental services, as suggested by Justice Douglas, is a novel doctrine. It seems to have been suggested to get around the Court's previous decision in *Lassiter*. If, following Mr. Justice Harlan's demand for documentary evidence, either the discrimination itself or the causal connection between the vote and the alleged discrimination must be factually proven, the inquiry is again broadened enormously and the possibility of endless dispute returns. Further, such a demand thrusts upon the plaintiff a tremendous burden, which, in the absence of a significant federal presence in this area or of trained advocates with continued interest, is beyond the ken of the average English illiterate involved in these cases.

The two New York cases under discussion are good examples of this. In both, the United States government, the city of New York, and the government of Puerto Rico (as amicus curiae) submitted briefs and oral arguments. It would be hard to find advocates with greater access to human and financial resources, or with greater familiarity with the problem. Yet, the "legislative setting" of the contested state provision was not explored at all,[193] and the number of people affected outside of New York was not examined in depth. The history of the New York provision is by no means as clear as that of similar provisions in the South, but there is substantial evidence that its original intention — and effect — was to prevent 1,000,000 New York Jews from voting the city's Republican administration out of office.[194] Further, no hard data was presented on the num-

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LANGUAGE LOYALTY 51-74. *See also* Warshauer, *Foreign Language Broadcasting,* in LANGUAGE LOYALTY 75-91.

[193] The Court in *Morgan* noted that there was "some evidence suggesting that prejudice played a prominent role in the enactment of the requirement." Katzenbach v. Morgan, 384 U.S. 641, 654 (1966).

[194] The New York law originated in the Constitutional Convention of 1915 and was explicitly modeled after the California and Connecticut statutes. N.Y. Times, July 1, 1915, at 5, col. 2. Its racial bias was attacked by Louis Marshall, President of the American Jewish Committee:

> A spirited protest by Louis Marshall against the proposal by Charles H. Young of Westchester, a Republican delegate at large, establishing by constitutional proviso an educational test for the exercise of the franchise, which would include ability to read and write the English language, lent unusual zest to tonight's session of the Constitutional Convention.
>
> Mr. Marshall was followed by Gordon Knox Bell, a nephew of James Gordon Bennett, who reminded the Convention that after all, this was an Anglo-Saxon country founded on traditions inherited from the "bleak islands overseas, now wrapt in war clouds," and urged them, on that ground, to support the Young proposal.
>
> . . . .
>
> [Mr. Marshall stated that] "[t]here are thousands of citizens in this state who

ber of people that would be affected, in New York or elsewhere in the country, by the Court's action, although the Court asked about this during the oral argument.

Also lacking was the historical perspective that would have given the Court some insight into the role English literacy tests were actually intended to perform.[195] (It is unfortunate that the Supreme Court in *Lassiter* took the Massachusetts court's interpretation of the purpose of the Massachusetts statute at face value.) The initial statutes in Connecticut (1855) and Massachusetts (1857) were designed to disenfranchise the Irish — all at the instigation of the Native American (Know-Nothing) party, which had captured the Massachusetts state legislature and was highly influential in Connecticut.[196] But the heyday of xenophobic legislation was from 1890 to 1920, when immigration had increased substantially and threatened to change the political balance in many states. This xenophobia was exacerbated by World War I, when nationalistic fervor contributed to the repression of ethnic identity and the distinction between the "new" immigrants and the "old" immigrants became fashionable. The Germans were then the largest immigrant group in the United States, a fact which permitted patriotism and xenophobia to become conveniently confused. The dates of English literacy suffrage legislation in northern and western states closely

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> cannot read and write English, but who are good citizens for all that; educated men who know all they need to know about our institutions, who in fact have a great deal more information on that subject than many of those who can read and write English."
>
> Mr. Marshall said there were about 1,000,000 New Yorkers who did not speak and write any language but Yiddish.
>
> "They cling to that tongue through sentiment," he said, "because enshrined in it are memories of a martyrdom patiently borne through long centuries of persecution. They come from a race which, when the Barons at Runnymede were compelled to make their X mark under the text of the Magna Charta, already had developed a literature and given the world through one branch the Decalogue and through another the Sermon on the Mount."
>
> Mr. Marshall warned the Convention that by adopting the amendment it would alienate the Jewish vote now decidedly friendly to the proposed new Constitution. Mr. Bell provoked applause by his speech. The Convention, he said, should lay aside all political consideration in dealing with the Young amendment.
>
> "It points the way to a future which in light of the present grave crisis we must face with fortitude," he said. *"It is not a question of nationality as much as it is a question of race.* Search your hearts deeply and see if the Anglo-Saxon in you does not assert itself for we are Anglo-Saxon after all. We are young. Our only hope of making a nation out of ourselves rests on solidifying the elements that come to our shores and fitting them to walk in the paths to which our Anglo-Saxon ancestry and our Anglo-Saxon traditions point as the paths in which lies our national destiny."

N.Y. Times, Aug. 25, 1915, at 5, col. 2 (emphasis added). See also the comments by Robert Wagner, Judge Clearwater, and others reported in N.Y. Times, Aug. 26, 1915, at 5, col. 1. The proposal was defeated in 1915 by a vote of seventy-seven to sixty-seven, N.Y. Times, Aug. 27, 1915, at 5, col. 3, but was resurrected by a Republican legislature in 1921. *See* New York Times, Oct. 23, 1921, § 7, at 2, col. 1. The New York *Times* favored the amendment on the grounds of elevating the electorate and the need for a common language to assure Americanization. N.Y. Times, Nov. 7, 1921, at 14, col 2. The amendment was subsequently accepted. N.Y. Times, Nov. 10, 1921, at 1, col. 1. *See also* N.Y. Times, Jan. 17, 1922, at 4, col. 6.

[195] The *Morgan* court, in a footnote, observed that the period 1915-21 was "not one of the enlightened eras of our history" and, therefore, could indicate the discriminatory character of the legislation. Katzenbach v. Morgan, 384 U.S. 641, 654 n.14 (1966).

[196] Bromage, *Literacy and the Electorate,* 24 AM. POL. SCI. REV. 946, 950-55 (1930). Massachusetts and Maryland were the two states where the Know-Nothing party captured the state legislature, and the Massachusetts English literacy law was a product of their anti-Irish-Catholic views. R. BILLINGTON, THE PROTESTANT CRUSADE 1800-1860 412-15 (1938). Restriction of the franchise for foreigners had been a primary aim of the Know-Nothing party and other groups for some time. *Id.* at 132.

parallel the southern legislation and show the interrelationship.[197] The specific reason behind the passage of such laws in particular states is, in some cases, difficult to reconstruct; but when litigants have questioned these tests, their discriminatory origins have usually been disclosed. The anti-Negro bias of the southern English literacy suffrage laws has been well established, and the Conneticut and Massachusetts anti-Irish bias is also thoroughly documented. Further, there is evidence that in Wyoming the focus was on the Finnish coal miners;[198] in California, in addition to a general antiforeigner bias, against the Oriental and Mexican;[199] and in Alaska, Indian suffrage was the target.[200] Thus the

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[197] The dates are: Wyoming (1889), Maine (1892), California (1894), Washington (1896), Delaware (1897), New Hampshire (1902), Arizona (1912), New York (1921), Oregon (1924), Mississippi (1890), South Carolina (1895), Louisiana (1898), North Carolina (1900), Alabama (1901), Virginia (1902), Georgia (1908), and Oklahoma (1910). D. McGovney, The American Suffrage Medley 59-60 (1949).

[198] Rassmusen v. Baker, 7 Wyo. 117, 50 P. 819 (1897).

[199] I have observed that there has been a movement lately in the South to disfranchise the colored citizens by the adoption of amendments similar to this; notably in the State of Mississippi. I am not willing that the Republican party of California shall set an example which may be quoted approvingly by the Solid South in its movement to disfranchise colored citizens. I do not believe it would be just to disfranchise those citizens of California who became such by virtue of the treaty between Mexico and the United States. I know, and you all know, that there are many citizens of California of Spanish blood and descent, who are unable to read the Constitution in the English language. . . . I believe every man who has attained manhood, and who has not sacrificed his right by crime, should have a voice in the government of the State in which he lives. I do not believe in making a corner in the right of suffrage, to use a commercial phrase. It might be to the interest of those who thus became a privileged class to lessen the opportunities of men to learn to read and write the English language. I believe the doctrine advocated by our great party in the years past — the doctrine of manhood suffrage — is the true one, and I am opposed to the adoption of this amendment. Sacramento Daily Record Union, Jan. 20, 1891, at 5.

There is a considerable Chinese vote growing up in this State. While foreign born Chinese are denied the right to vote, the native born Chinese is invested by the Constitution with all the privileges of citizenship. A Chinese born in America is eligible to the Presidency. Quite a crop of Chinese children are growing up here, and in a few years enough of them will reach voting age to make themselves felt. Had the Chinese who came here twenty years ago brought their women with them we would today have an alien vote that would have caused an immense deal of trouble to this coast. It is very fortunate that the Chinese, in the days of unrestricted immigration, did not bring their wives and household goods. Had they done so the anti-Chinese movement would have assumed its proper phase — that of a race conflict. A few thousand Chinese votes would complicate political matters in California considerably. As it is, in five years there will probably be 2,000 Chinese voters in this State. There will be no end of connubiating to catch this vote. Oakland Morning Times, June 2, 1892, at 4.

Yet the illiterate vote is no slight factor in this, as in other States. The eleventh census report upon this subject has not yet, we believe, been published, but it may safely be presumed that the conditions of 1880 have not — with ignorant foreigners being registered and herded like cattle — been improved. In 1880, then, there were in California 3,267 white males over the age of 21 years who were either unable to read or to write. There were 16,857 illiterate colored men who were of the voting age. Here were 20,484 men so ignorant that they could not read a sentence, yet the great majority of them exercised the right of suffrage — this at a time when the brainiest woman in the State was not permitted to cast a ballot. If but this proportion of illiteracy were maintained, there would have been in the State in 1890 about 28,600 men who had attained their majority and yet possessed not the rudiments of a book education. When it is remembered that the entire vote of California in 1890 was but 250,220, the full significance of the terrible ignorant vote will be appreciated by every thoughtful person.

In some instances, illiteracy is doubtless a misfortune rather than a fault, yet this constitutes no justification for placing a ballot in the hands of an incompetent voter. San Jose Daily Herald, Oct. 17, 1892, at 2.

[200] In answer to the statement: "In opposing a fair literacy test he has opposed the

"legislative setting" of all of these statutes was as tainted as that of those southern statutes found invalid by the Court or suspended by the Congress in the Voting Rights Act of 1965 — a conclusion which should lead one to question whether English literacy suffrage requirements should be presumptively reasonable.

The issue, then, is how are such laws used now? In the South, the Negro — the original target of southern legislation — continues to be affected. In the North and West, the racial victim has changed, partly because of assimilation and shifts in immigration patterns, and partly because of changes in state voting laws requiring United States citizenship as a condition of voting. Many states at one time or another permitted declarant aliens to vote. Since 1926, all states require citizenship as a condition of suffrage.[201] This fact, combined with the change in the naturalization statute making English literacy required after 1950, narrows the focus of any state English literacy statute to citizens by birth — the Negro, the Puerto Rican immigrant (since persons born in Puerto Rico are citizens by birth), the Mexican-American of the Southwest, and the Indian. This means that the English literacy burden on the ballot presently falls — as never before — on nonimmigrant groups that are, generally, distinguishable by color. The right of these citizens to full participation in the life of the country is much greater than that of the alien who came here by choice, yet the process of assimilation for the citizen is infinitely more difficult. Finally, much scholarly opinion has condemned English literacy tests on the grounds that where there is universal public education they are an unnecessarily indirect means to an end, and on the ground that there is danger of abuse in their administration.[202]

Considering that (1) these English literacy statutes were originally intended

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> wishes of the white voters of Alaska and made it possible for the Indian to control election results," I wish to say:
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> The proportion of Indians to white in voting is only one to eight and a half, so the Indian vote would not control an election. I am opposed to the retroactive literacy test. It would be as unjust to the whites as the natives. Some whites who voted in Alaska for twenty years would lose that privilege. Nothing so drastic has ever been passed in the states. It would make it impossible for anyone to vote who could not read the constitution without humiliation. The Seward Gateway, Sept. 25, 1926, at 5,

col. 3.

> Just a few words about the Indian question. . . . You are interested to just this extent; if the people in Alaska are not careful the Indians of Alaska will be running your Territory, as they are running some of the communities in Southeastern Alaska today. Sitka is run by an Indian council. Wrangell also, but there they have a population of 150 whites and 225 Indians. Most of them are so illiterate that they cannot even read the ballot that they vote, and I wonder if you will believe it, but the majority of their voting is done by block voting. They have a stencil cut, which just fits the ballot, and all they have to do is to fix the holes in the stencil over the proper place on the ballot and make a mark in the place provided. Of course, all the Indians are not of this type, some are very highly educated, and graduates of Chiwawa Carlisle Universities, and they are perfectly able to read their ballots but there is a large percentage of these Indians of the older generation who neither read nor write and who have not the slightest conception of what they are doing. . . .
>
> I am for a fair illiteracy test that will prevent this block voting in Southeastern Alaska, and am a supporter of the White Bill which was introduced into Congress. Mr. Sutherland objected to this bill but he realized that his only salvation for reelection lies in the Indian votes. The Seward Gateway, Oct. 19, 1926, at 1, cols. 2 &

3. *See also* The Seward Gateway, Oct. 11, 1926, at 1. Alaskan officials have indicated that as of April, 1962, the literacy requirement is not enforced and has not resulted in any disqualifications. *Hearings on S. 480 and S. 2750 Before the Subcomm. on Constitutional Rights of the Comm. on the Judiciary,* 87th Cong., 2d Sess. 315-16 (1962).

[201] *See* Aylsworth, *The Passing of Alien Suffrage,* 25 AM. POL. SCI. REV. 114 (1931).

[202] *See, e.g.,* D. MCGOVNEY, *supra* note 197, at 59; Porter, *Suffrage Provisions in State Constitutions,* 13 AM. POL. SCI. REV. 577, 588 (1919).

to be racially discriminatory; (2) in operation they are racially discriminatory now (although in some cases against different races) since they operate almost exclusively against Negroes, Puerto Ricans, Mexicans, and Indians; (3) these groups are nonimmigrants subject to the color prejudices of American life; and (4) evidence of administrative discrimination is extremely difficult to develop — in view of these facts the suggestion of Justices Douglas and Fortas for a presumption of unconstitutionality makes more operational sense than the opposite presumption of Mr. Justice Harlan. This presumption is reasonable not because the right to vote is a specially prized or a key right, but because the English literacy test has, as a matter of fact, usually been designed to discriminate on the basis of race. Therefore, the burden should be upon the state to show that its statute is not the usual discriminating type, i.e., that its statute is not discriminatory in practice and was conceived with the purpose of uplifting the electorate.

IV. English Literacy as a Condition of Business Activity

English literacy as a condition of employment in certain fields has been imposed directly through legislation requiring knowledge of English to hold certain jobs, and indirectly by restrictions on the activities of aliens. Prior to the 1880's, exclusion of foreigners from various occupations was relatively uncommon, though the Pacific states excluded the Chinese from several occupations, and California had passed an exclusionary tax on foreign miners.[203] But unemployment in the 1880's spurred the federal government to try to exclude aliens from public works programs — the bill passed the House but failed in the Senate — while similar measures were adopted in several states.[204] Most of the statutory English literacy restrictions on occupational opportunity arose during the period from 1890 to 1920, and were part of the antiforeigner legislation proliferating in the United States at that time. The economic activities of foreigners came under particular scrutiny during this period because of the increased role the alien played in the United States labor force.[205] This economic competition was exacerbated by the depression of 1913-14.[206]

All states handled the matter directly: they simply passed statutes limiting governmental service and private business operations to citizens or those who had declared their intention to become citizens. This extensive restriction of the alien's right to work, both in public and private employment, was the subject of considerable litigation. The initial rationale for sustaining legislation that prevented aliens from obtaining public employment postulated a common ownership or interest that citizens had in their government — an interest that they might decide to vest only in themselves.[207] This "membership" theory of govern-

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[203] J. Higham, *supra* note 43, at 46.

[204] *Id.*

[205] The fear of foreign capital grew significantly in the 1880's, culminating in the Alien Land Law of 1887. Vagts *The Corporate Alien: Definitional Questions in Federal Restraints on Foreign Enterprise,* 74 Harv. L. Rev. 1489, 1493 (1961).

[206] J. Higham, *supra* note 43, at 183.

[207] *See, e.g.,* Heim v. McCall 239 U.S. 175 (1915); People v. Crane, 214 N.Y. 154, 108 N.E. 427 (1914), *aff'd,* 239 U.S. 195 (1915).

The text treats in summary fashion a complex subject which has been the subject of extenment thus would permit the exclusion of aliens from government jobs. This same theory also sustained legislation restricting the operations of aliens in areas where public resources were involved (e.g., an alien could be refused a license to hunt in the public preserve).[208] The most recent Supreme Court case in this area, decided shortly after World War II, seemed to limit the extension of this theory. California denied commercial fishing licenses to those aliens who were ineligible for citizenship (i.e., Japanese aliens), but there was clearly no reasonable relationship between the statute's classification of persons and the business regulated or resource being preserved.[209]

This standard had already been applied where ordinary occupations were restricted,[210] but an additional argument was used where the occupation was potentially dangerous to society. In cases involving these special callings, the courts agreed that states could reasonably keep certain occupations in the hands of those who have a stake in the society already (citizens) or declared themselves willing to have a stake in the society (declarant aliens).[211] The type of enterprise so potentially dangerous that it could be limited only to citizens was not so clearly articulated, and courts differed widely on this point.[212] Extensive restrictions also limited foreign access to the professions — medicine, law, and dentistry. Such restrictions were rationalized on the ground — closely related to that advanced in the dangerous business cases — that in the professions the law must require competence in order to safeguard the public. Since investigation of the professional man's training is necessary to do this, it was argued, evaluation of qualifications acquired abroad is too difficult to assure the quality the public has a right to expect.[213]

In short, the usual need to show a reasonable relation between the regulation and the potential evil being restrained is present in the occupational qualification area, but here the relationship is often easier to show because of the "membership" theory in government service and because of the possible dangers in other occupations and in the professions. The validity of these justifications for occupational regulation (they have been sharply criticized by commentators) does not concern us here. Their significance for our purposes is to show that the legal doctrine which has been utilized to sustain these particular occupational limitations is uniquely applicable to aliens and would not be defensible to bar citizens illiterate in English from entering these same fields of endeavor.

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sive commentary. *See, e.g.,* Note, *Constitutionality of Restrictions on the Aliens' Right to Work,* 57 COLUM. L. REV. 1012 (1957); Note, *National Power to Control State Discrimination Against Foreign Goods and Persons: A Study in Federalism,* 12 STAN. L. REV. 355, 364-69 (1960).

[208] *See, e.g.,* Patsone v. Pennsylvania, 232 U.S. 138 (1914). *See also* Terrace v. Thompson, 263 U.S. 197 (1923); Porterfield v. Webb, 263 U.S. 225 (1923).

[209] Takahashi v. Fish & Game Comm'n, 334 U.S. 410, 418-19 (1948).

[210] Truax v. Raich, 239 U.S. 33 (1915).

[211] *See, e.g.,* Ohio *ex rel.* Clarke v. Dechebach, 274 U.S. 392 (1927) (state law did not permit aliens to operate pool and billiard parlors).

[212] *Compare* Massachusetts v. Hana, 195 Mass. 262 (1907) *with* State v. Montgomery, 94 Me. 192, 47 A. 165 (1900) both involving junk peddlers. *See also* George v. Portland, 114 Ore. 418, 235 P. 681 (1925) wherein it was held to be unconstitutional discrimination to limit the occupation of soft drink salesman only to citizens.

[213] After the rise of Hitler, a number of Jewish dentists and doctors migrated to the United States. This precipitated additional restrictions preventing them from practicing in the United States. *See generally* Note, *Refugees and the Professions,* 53 HARV. L. REV. 112 (1939).

It is evident from the above discussion that aliens might well be unaffected by many English literacy employment requirements — the very fact that one is an alien often precludes his employment in certain fields. Konvitz, drawing examples from every state of the Union, lists seventy private occupations (including such diverse callings as junk dealer, pool parlor operator, boiler inspector, physician, attorney, and architect) that are restricted to citizens.[214] Thus, although the overlap is not perfect, the alien who is illerate in English is less likely to be directly affected by the English literacy requirements that also bar his entry. The burden, as in the case of English literacy suffrage requirements, thus will fall primarily on disadvantaged American citizens: Negroes, Mexican-Americans, Puerto Ricans, and Indians. Moreover, the origin of much, though not all, of this occupational regulation discloses its discriminatory purpose, paralleling the voting restrictions noted earlier.

The only standard to be applied here is that of the reasonable relation between the English literacy requirement and the task to be performed. Recent cases declaring unconstitutional the exclusion from a profession of persons with certain past political affiliations,[215] or of a given race,[216] have reaffirmed the general principle that reasonable qualifications will be permitted as a condition of practicing certain professions. But the courts have further indicated that they will examine carefully the reasonableness of any such conditions. Thus, if a knowledge of English is necessary in order to practice the profession safely (e.g., a railroad trainman or the driver of an explosives truck must know English in order to read certain signs) then an English literacy requirement is within the criterion of reasonableness. But not all language requirements are so clearly based on need. Many appear to bear little relationship to the task to be performed, as where miners and prison helpers are required to be literate in English.

Other English literacy requirements involving business activity are only formal and impose little hardship on the entrepreneur who is illiterate in English. Thus, incorporation papers frequently must be in English, and in many states certain wares must be labeled in English. Other requirements relate primarily to the consumer, as where pawnbrokers, small loan operators, or motor vehicle vendors must give clear statements of account, in English, to their customers. Some, such as the prohibition of child labor except where the child knows English, appear to have had a humanitarian origin — the prevention of exploitation — but also served to keep cheap foreign labor from competing in the market.

Admittedly, the *Yu Cong Eng* situation will arise rarely, for few state statutory requirements are designed to preclude compliance by foreign-speaking persons already operating a business. But an analogous situation does arise where the state requires an entrance examination, given only in English, as a condition of operating the business. If the use of English bears no substantial relationship to the effective practice of the profession (e.g., barber examinations),[217] one may question whether, on the *Yu Cong Eng* principle, an examination conducted exclusively in English is constitutionally valid.

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[214] M. Konvitz, The Alien and the Asiatic in American Law 190-207 (1946).

[215] Schware v. Board of Bar Examiners, 353 U.S. 232 (1957); Konigsberg v. State Bar, 353 U.S. 252 (1957).

[216] Seiden v. Boone, 221 F. Supp. 845 (D. Del. 1963).

[217] N.Y. Gen. Bus. Law § 434.3 (McKinney 1968).

V. English Literacy in Legal Proceedings

The role of English as the official language for legal proceedings has been litigated with respect to the selection of jurors and the publication of legal notices. Some early cases held, where the statute only required publication of legal notices in newspapers without specifying the language, that the notices, to be valid, must be in English and in an English newspaper.[218] Further, the general rule in these early cases was that if the statute required "a notice in all newspapers," this meant all English language newspapers.[219] On the other hand, there is no record of any attempt to inhibit the publication of foreign-language newspapers.

There are also a number of old cases holding that due process of law is violated if jurors do not have a sufficient knowledge of English to enable them to perform their duties.[220] One court held that a juror who did not know English could be discharged by the court — even over the objection of the defendant.[221] There are other cases, however, which hold that a court can provide an interpreter for a non-English-speaking jury where the local population is largely non-English-speaking.[222] In the only recent case which has touched upon the issue, a federal district court sympathized with the view that the selection of a grand jury based upon English literacy tests may be a violation of due process of law.[223]

VI. English as the Exclusive Language of the American School System

Statutes requiring English as the language of instruction in the school system raise different policy questions. Here, access to the fruits of the American way of life is not involved; rather the issue is long-term, for the school acts as a melting pot to transmit the means to participate and contribute fully in American life. Nevertheless, the early history of these statutes frequently indicates a deep anti-Catholic or anti-German motivation. At other points the bitterness engendered by these statutes precipitated vociferous conflicts of opinion over the role that English plays in American life and its importance in the school system. State regulation of schools, even when prompted by the highest of motives — when it sought to transmit American values and culture through language — was striking a very sensitive area.

Prior to the last decades of the nineteenth century, many states, by statute or administrative practice, permitted instruction to be conducted in languages other than English in their elementary and secondary schools.[224] Most often, such instruction was to be found in private schools (usually, but not always, church-related). Early attempts to require instruction to be in English in these private schools — at least in certain subjects or for certain periods of time — were frequently resisted successfully by the groups most directly affected.[225] Even when rejected or subsequently repealed, however, the impact of such legislation was sufficient to cause some degree of conformity.[226] In the late 1880's, interest in the language of instruction began to increase and was related in some degree to the religious friction, noted earlier, that flared during this period.[227]

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[218] *See, e.g.*, People *ex rel.* Stuckart v. Day, 277 Ill. 543, 115 N.E. 732 (1917); Conners v. Lowell, 209 Mass. 111, 95 N.E. 412 (1911). *Contra*, Kernitz v. Long Island City, 50 Hun. 604, 3 N.Y.S. 144 (Sup. Ct. 1888).

[219] Tylee v. Hyde, 60 Fla. 389, 52 So. 968 (1910). *But see* State v. Orange, 54 N.J.L. 111, 22 A. 1004 (Sup. Ct. 1891).

[220] *See, e.g.*, Sullenger v. State, 79 Tex. Crim. 98, 182 S.W. 1140 (1916); *In re* Impanelling of Petit Jury, 6 P.R.F. 685 (1913). These issues rarely involve aliens since forty-three states limit jury duty to citizens. W. Gibson, Aliens and the Law 148 (1940).

[221] People v. Arceo, 32 Cal. 40 (1867). *See also* Montague v. Commonwealth, 51 Va. 748, 10 Gratt. 767 (1853).

[222] *See, e.g., In re* Allison, 13 Colo. 525, 22 P. 820 (1889); Territory v. Romaine, 2 N.M. 114 (1881).

[223] United States v. Greenberg, 200 F. Supp. 382 (S.D.N.Y. 1961).

Increased immigration and the First World War focused attention on Americanization[228] and the need for English as the medium of instruction in American schools. Thus in the decade 1913-23, partly in response to the urging of the federal government, states passed as many statutes requiring English to be the language of instruction in the public and private schools as had been passed in all previous years. In 1903 fourteen states had such a statutory requirement; in 1913 the number had increased to seventeen; and in 1923 the number was thirty-four,[229] approximately the number today.

The Americanization[230] movement frequently focused on ways that the immigrant could better adjust to his new surroundings; it looked for ways to increase, rather than limit, the alien's participation in American life.[231] The Division of Americanization, which flourished in the federal government from 1914 to 1919,[232] emphasized the need for social measures[233] to augment statutes requiring English in the elementary schools.[234] In short, the desire to assist the adjustment of aliens was inextricably bound up with a desire to seek uniformity of language; the Supreme Court decisions tried to accommodate this need for adjustment without permitting elimination of diversity.

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[224] *E.g.*, Pennsylvania, Ohio, Missouri, New York, and Oregon. See H. KLOSS, DAS VOLKSGRUPPENRECHT IN DEN VEREINIGTEN STAATEN VON AMERIKA 265, 267, 473, 630-31, 721, 660 (1940).

[225] For the history of attempts to require English in schools of the Pennsylvania Dutch, see F. KLEES, THE PENNSYLVANIA DUTCH 291-94 (1950) and J. WICKERSHAM, A HISTORY OF EDUCATION IN PENNSYLVANIA 320, 560 (1885). The Bennett Law in Wisconsin and the Edwards Law in Illinois (named after school superintendents), attempts to extend the requirement of English language instruction to the private schools, were both passed in 1889. By 1893 both laws had been repealed. *See generally* Bascom, *The Bennett Law,* 1 EDUCATIONAL REVIEW 48 (1891); Kellogg, *The Bennett Law in Wisconsin,* 2 WIS. MAG. OF HIST. 1 (1918); COOK, EDUCATIONAL HISTORY OF ILLINOIS *passim* (1912).

[226] *See* F. KLEES, *supra* note 225, at 293; Kellogg, *supra* note 225, at 24.

[227] *See, e.g.,* Kucera, *Church-State Relationships in Education in Illinois,* 19 EDUC. RESEARCH MONOGRAPHS 111-26, 161-62 (No. 1, 1955); D. REILLY, THE SCHOOL CONTROVERSY (1891-1893)at 45, 56-59 (1943); D. KINZER, AN EPISODE IN ANTI-CATHOLICISM: THE AMERICAN PROTECTIVE ASSOCIATION 66 (1964).

[228] *See generally* Rider, *Americanization,* 14 AM. POL. SCI. REV. 110 (1920); E. HARTMANN, *supra* note 138.

[229] FLANDERS, LEGISLATIVE CONTROL OF THE ELEMENTARY CURRICULUM 18-19 (1925). A bill was introduced in the Senate which could have required English as the "language of instruction in all schools, public and private." S. 1017, 66th Cong., 1st Sess. § 10 (1919).

[230] Flanders notes that this same decade, 1913-23, saw an increase in legislative requirements for subjects "whose obvious tendency is to foster local, provincial, and national pride." FLANDERS, LEGISLATIVE CONTROL OF THE ELEMENTARY CURRICULUM 61 (1925). Thus, a course in "civil government," as a legislative requirement, increased from seventeen to twenty-four states; "citizenship" from one to fourteen states; and the "Constitution of the United States" from nine to twenty-three states. *Id.* at 36-40.

[231] A series of state efforts are noted in E. HARTMANN, *supra* note 138, at 64-87. Non-governmental efforts, more parochial in character, are noted in Commons, *Americanization by Labor Unions,* 39 CHANTANQUAN 226 (1904).

[232] The first state legislation in support of English evening classes for the foreign-born was passed in New Jersey in 1907 and quickly spread to other states. E. HARTMANN, *supra* note 138, at 36, 237-52. In some cases attendance was compulsory. J. HIGHAM, *supra* note 43, at 46-47.

[233] The activities of the division also included attempts at better communications. A sym-

Modern educational theory encourages the use of the foreign language as a means of teaching non-English-speaking children. The Bilingual Education Act proceeds on this assumption. Nevertheless, the basis of the theory remains unclear. Recent studies by the New York City Board of Education and the National Education Association [NEA] of the educational needs of Spanish-speaking children suggested the desirability of some degree of language segregation. The studies' statistical data is limited, however, and the explanation is certainly possible that instruction in the foreign language is superior frequently because it acts as a selection device to attract teachers more interested and sympathetic to the non-English-speaking student.[235]

The New York study assumed the desirability of acquainting the Puerto Rican student as much as possible with American life and, therefore, proposed segregated classes only under special circumstances and with special coordinating teachers.[236]

The NEA survey of elementary education afforded Spanish-speaking children in the Southwest[237] (Arizona, California, Colorado, New Mexico, and Texas) emphasized the psychological problem of adjusting to the "Anglo" culture evidenced in school.[238] The NEA study, therefore, recommended that preschool and lower elementary instruction should be conducted in both Spanish and English, with English, in some cases, also taught as a second language. In addition, the study encouraged fostering Mexican and Spanish cultural traditions so that pupils would take pride in their ethnic identity.[239] This obviously envisions a separate program and long-term segregation of pupils. The NEA study is also significant because it indicated that state statutes requiring English as the language of instruction did not provide sufficient flexibility in school districts embracing large numbers of non-English-speaking students. The study further

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pathetic treatment of its activities is found in South, Bureau of Education: Its History, Activities and Organization 39-41 (1923). *See also* E. Hartmann, *supra* note 138, at 97-102, 174-76, 225-26.

[234] Thus, the Americanization Division of the Bureau of Education stated in 1919: "We urge that states shall require that all schools . . . shall be administered in the English language, and that the primary studies of all schools shall be in English." H. Kloss, Das Volksgruppenrecht in den Vereinigten Staaten von Amerika 750 (1940). *See also* Report of the Commissioner of the United States Bureau of Education 189-94 (1919).

[235] A list of the National Defense Language and Area Centers for 1967-68 and the eighteen PACE proposals funded by the Department of Health, Education and Welfare between December, 1965 and April, 1967, which may provide hard data, are listed in *Hearings on H.R. 9840 and H.R. 10224 Before the General Subcomm. on Education of the Comm. on Education and Labor,* 90th Cong., 1st Sess. 57-68 (1967).

[236] New York Board of Education, Puerto Rican Study, 1953-1957, at 199-202 (1958).

[237] National Educational Association, The Invisible Minority . . . Pero No Vencibles (1966). Approximately one-sixth of the school age population in the Southwest is Spanish-speaking.

[238] The report overlooks the importance of the color issue. For example, the letter of a thirteen-year-old Mexican-American girl, which opens the report, says "my dark skin always makes me feel that I will fail." *Id.* at 3. Yet the survey never mentions color at all, but treats the cultural and language difference as if it alone were the problem.

[239] *Id.* at 17-18.

suggested the ineffectiveness of such legislation where the goal of the school district and the state is rapid Americanization, though the NEA clearly questioned the propriety of that objective. NEA recommended the repeal of state laws specifying English as the language of instruction.[240]

No case has as yet questioned the validity of a statutory mandate that English be the language of instruction in the schools.[241] The Bilingual Education Act reflected the federal government's awareness of the need for experimentation with foreign language instruction. While there is no evidence that the federal government is using the powers in section 5 of the fourteenth amendment to occupy the field and invalidate state statutes requiring English language instruction, the passage of the Act affords another reason to question the reasonableness of state legislation limiting the language of instruction in the schools to English. In addition, the Act's policy would seem to reinforce arguments that would require the state to assume the burden of showing that the statute reasonably serves some legitimate state interest in education or cultural assimilation.

The Bilingual Education Act may be a mixed blessing. There is considerable danger that the Act will be used to prevent, rather than assist, the Spanish-speaking child from participating in the American school system.[242] In a number of recent cases arising in the Southwest, pupils of Mexican descent were segregated by administrative action, allegedly on the basis of the educational needs of the Spanish-speaking students, but the courts found that such segregation was actually intended to separate the races.

In *Gonzalez v. Sheely*,[243] non-English-speaking pupils were segregated for alleged educational purposes. Although noting the validity of segregation for bona fide educational purposes, the court found that the disputed classification was based on a student's Mexican or Latinized name:

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[240] *Id.* at 18. *See also Hearings on H.R. 9840 and H.R. 10224 Before the General Subcomm. on Education of the Comm. on Education and Labor,* 90th Cong., 1st Sess. (1967).

[241] Today, because of changed circumstances, the issue is not commonly debated, although it is still present in Maine, and, perhaps, in Alaska. Theriault, *The Franco-Americans of New England,* in CANADIAN DUALISM 409 (M. Wade ed. 1960). Although Maine has required English to be the language of instruction since 1919, it has only been since 1960 that the state has asked every private elementary school to file a report stating whether English is the language of instruction. E. HELMREICH, RELIGION AND THE MAINE SCHOOLS: AN HISTORICAL APPROACH (1960). *See* Anchorage Daily News, June 8, 1968, at 5, col. 4.

[242] The same danger was noted in a Texas education survey made in 1925:

> On pedagogical grounds a very good argument can be made for segregation in the early grades. In the opinion of the survey staff, it is wise to segregate, if it is done on educational grounds, and results in distinct efforts to provide the non-English-speaking pupils with specially trained teachers and the necessary special training resources.
>
> This advice is offered with reluctance, as there is danger that it will be misunderstood by some. By others it may be seized upon as a means of justifying the practices now obtaining in some communities. In some instances segregation has been used for the purpose of giving the Mexican children a shorter school year, inferior buildings, inferior equipment, and poorly paid teachers. REYNOLDS, THE EDUCATION OF SPANISH SPEAKING CHILDREN IN FIVE SOUTHWESTERN STATES 9 (1933).

Texas now has a special preschool program for non-English-speaking children. TEX. REV. CIV. STAT. ANN. art. 2654-1b (1965). Similar dangers with respect to the operation of the Bilingual Education Act were raised by its supporters. *See, e.g., Hearings on S. 428 Before the Special Subcomm. on Bilingual Education of the Comm. on Labor and Public Welfare,* 90th Cong., 1st Sess. pt. 2, at 475 (1967) (statement of E. Gonzales, Ass't Superintendent of Public Instruction, Cal. Dep't of Education).

[243] 96 F. Supp. 1004 (D. Ariz. 1951).

> English language deficiencies of some of the children of Mexican ancestry as such children enter elementary public school life as beginners may justify differentiation by public school authorities in the exercise of their reasonable discretion as to the pedagogical methods of instruction to be pursued with different pupils, and foreign language handicaps may exist to such a degree in the pupils in elementary schools as to require separate treatment in separate classrooms. Such separate allocations, however, can be lawfully made only after credible examination by the appropriate school authorities of each child whose capacity to learn is under consideration, and the determination of such segregation must be based wholly upon indiscriminate foreign language impediments in the individual child, regardless of his ethnic traits or ancestry. But even such situations do not justify the general and continuous segregation in separate schools of children of Mexican ancestry from the rest of the elementary school population, as has been shown to be the practice in respondent school district. Omnibus segregation of children of Mexican ancestry from the rest of the student body in the elementary grades in the schools involved in this action because of language handicaps is not warranted by the record before us.[244]

In *Mendez v. Westminster School District*,[245]

> the respective boards of trustees had taken official action, declaring that there be no segregation of pupils on a racial basis but that non-English-speaking children (which group, excepting as to a small number of pupils, was made up entirely of children of Mexican ancestry or descent), be required to attend schools designated by the boards separate and apart from English-speaking pupils; that such group should attend such schools until they had acquired some proficiency in the English language.
>
> The petitioners contend that such official action evinces a covert attempt by the school authorities in such school districts to produce an arbitrary discrimination against school children of Mexican extraction or descent and that such illegal result has been established . . . .[246]

The court held the boards' action unconstitutional, but the precise grounds are unclear. The court at one point seemed to say that the segregation of Mexican students was invalid regardless of its educational basis and further attacked the notion that the English language is more readily learned in the segregated environment:

> We think that under the record before us the only tenable ground upon which segregation practices in the defendant school districts can be defended lies in the English language deficiencies of some of the children of Mexican ancestry as they enter elementary public school life as beginners. But even such situations do not justify the general and continuous segregation in separate schools of the children of Mexican ancestry from the rest of the elementary school population as has been shown to be the practice

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[244] *Id.* at 1009.

[245] 64 F. Supp. 544 (S.D. Cal. 1946), *aff'd*, 161 F.2d 774 (9th Cir. 1947).

[246] *Id.* at 546.

> in the defendant school districts — in all of them to the sixth grade, and in two of them through the eighth grade.
>
> The evidence clearly shows that Spanish-speaking children are retarded in learning English by lack of exposure to its use because of segregation, and that commingling of the entire student body instills and develops a common cultural attitude among the school children which is imperative for the perpetuation of American institutions and ideals. It is also established by the record that the methods of segregation prevalent in the defendant school districts foster antagonisms in the children and suggest inferiority among them where none exists.[247]

At other points in the opinion, however, the court suggested that if overcoming a language difficulty alone were the basis of the segregation, such separation would be constitutional.[248]

In view of contemporary racial tensions, the courts should scrutinize carefully any linguistic segregation for allegedly educational purposes. Courts should begin to formulate criteria to measure the educational design behind the segregation. Bilingual teachers, a specially designed curriculum, and a frequent testing program sufficiently individualized so that a student can be transferred from the foreign-language section to the normal school as soon as possible — these should be required. Federal regulations under the Bilingual Education Act will likely incorporate similar criteria, and, if so, might well be adopted by the courts in testing segregation along linguistic lines.

A number of states still restrict the use of foreign languages as media of instruction in public and private schools.[249] On their faces, these statutes are not as restrictive as the Hawaiian laws discussed previously, and the lack of litigation may indicate that they are not actively enforced. Still, in light of *Meyer v. Nebraska,* such laws appear of questionable validity.

VII. The Special Case of Puerto Rico

The problem discussed in *Morgan* — English literacy voting tests as applied to those educated in Puerto Rico — arose because of two factors: (1) the large migration to the United States from Puerto Rico, and (2) the unique status of Puerto Rico in the United States federal structure.

Between 1946 and 1960, approximately 600,000 Puerto Ricans migrated to the United States,[250] with approximately three-quarters of these settling in New York city.[251] Perhaps less than one-half were literate in English.[252] In

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[247] *Id.* at 549.

[248] *Id.* at 550. *See also* Hernandez v. Driscoll Consol. Independent School Dist. 2 Race Rel. L. Rep. 34 (1957).

[249] *See* notes 10-12 *supra,* and accompanying text.

[250] Migration Division, Puerto Rico Department of Labor, Progress in Puerto Rico, Puerto Rican Migration: A Summary of Facts and Figures 16-17 (1965). Puerto Rican migration to the continental United States closely follows economic opportunities available on the mainland. C. Senior, Our Citizens From the Caribbean 70-78 (1965).

[251] Migration Division, Puerto Rico Department of Labor, Progress in Puerto Rico, Puerto Rican Migration: A Summary of Facts and Figures 16-17 (1965). M. Dworkis, The Impact of Puerto Rican Migration on Governmental Services in New York City (1954); D. Wakefield, Island in the City (1957).

1955, fifty percent of the 102,000 Puerto Rican children in New York city's schools were rated "fluent," thirty-three percent spoke hesitantly, and seventeen percent spoke no English. In school year 1963/64, approximately fifty-eight percent of the 174,736 Puerto Rican children in New York city's schools were rated fluent in English.[253] Precise statistics with respect to adult English literacy among Puerto Rican immigrants are not available, but data for the total territorial population may profitably be examined.[254] Especially significant is the sharp difference in 1960 between English literacy (37.7 percent) in Puerto Rico and literacy in any language on the island (83 percent).

The migration from Puerto Rico to the United States slowed significantly from 1960 to 1963, but in the last few years it has increased once more, now averaging approximately 25,000 persons each year. The continued Puerto Rican immigration is significant because it appears that this group will, for some time, continue to contain large numbers of people illiterate in English.

Puerto Rico's unique status as a commonwealth permits it a great deal of autonomy[255] — it is the one area in the United States where the implicitly official character of the English language is openly questioned. Commonwealth status has evolved only with a great deal of difficulty involving a high degree of statesmanship on the part of federal and Puerto Rican officials. Its role in the United States federal structure is unclear,[256] but it strikes a workable balance between the political and economic importance of the United States to Puerto Rico and the social and political desires of Puerto Rico for a separate identity. The right to use Spanish as the primary[257] language of the island, both in the school system

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[252] LITERACY: PUERTO RICO AND THE UNITED STATES;
ABILITY TO SPEAK ENGLISH: PUERTO RICO; 1910-60

	Percentage Literate[a]		*Percentage Able to Speak English*
Year	*United States*	*Puerto Rico*	*Puerto Rico*
1910	92.3	33.5	3.6
1920	94.0	45.0	9.9
1930	95.7	58.6	19.4
1940	97.1	68.5	27.8
1950	96.8	75.3	26.1
1960	97.6	83.0	37.7

SOURCE: UNITED STATES-PUERTO RICO COMMISSION ON THE STATUS OF PUERTO RICO, STATUS OF PUERTO RICO 152 (1966).

[a] Literacy is defined as the ability to read and write a simple message in any language. Percentages are based on the population ten years of age and older. Percentages for the United States for 1950 and 1960 are for the population fourteen years of age and older.

[253] C. SENIOR, OUR CITIZENS FROM THE CARIBBEAN 83 (1965).

[254] See note 252 *supra.*

[255] *See generally* UNITED STATES-PUERTO RICO COMMISSION ON THE STATUS OF PUERTO RICO, STATUS OF PUERTO RICO (1966).

[256] *See generally* Leibowitz, *The Applicability of Federal Law to the Commonwealth of Puerto Rico,* 56 GEO. L.J. 219 (1967).

[257] As a result of a statute stemming from the days immediately following the Spanish-American War, Puerto Rico is officially bilingual. P.R. LAWS ANN. tit. 1, § 51 (1965). However Commonwealth official literature indicates that Spanish is the "official" language of the Island. *Que Pasa In Puerto Rico,* in OFFICE OF INFORMATION, PUERTO RICO ECONOMIC DEVELOPMENT ADMINISTRATION, OFFICIAL VISITORS GUIDE TO PUERTO RICO 2 (1968). *See also Hearings on H.R. 9840 and H.R. 10224 Before the General Subcomm. on Education of*

and in governmental and business proceedings, is not only a major convenience but is the unmistakable symbol of Puerto Rico's cultural autonomy. Any attempt to interfere with this arrangement would be a major error and would probably result — as it did in the past when the federal government tried legal pressure to coerce the use of English on the island — in great resentment with little corresponding benefit. Since 1945, Puerto Rico has de-emphasized English in its schools and in its culture, although very recently, upon the accession of governor Luis Ferre (an avowed supporter of statehood) English has been stressed once more.[258] Newspapers, radio, and television have increasingly employed English; and as commercial ties between the United States and Puerto Rico have grown, English literacy in Puerto Rico has correspondingly increased and will likely continue to increase.[259]

The desirability of continuing this language difference has been recognized by Washington officials even while affirming English as the official language of the United States. Thus, the United States-Puerto Rico Commission on the Status of Puerto Rico affirmed the Commonwealth's cultural autonomy and suggested that

> Statehood would necessarily involve a cultural and language accommodation to the rest of the federated States of the Union. The Commission does not see this as an insurmountable barrier, nor does this require the surrender of the Spanish language nor the abandonment of a rich cultural heritage.[260]

But the two Senate members of the Commission made clear that English would have to be the, or an, official language of the island if Puerto Rico were to become a state:

> The genius of the American system of government rests, in substantial part, in the diversity of origin of its people. We are a people who come from many and differing cultures, races, creeds, and traditions. A common language has brought us together as Americans.
>
> The people of Puerto Rico represent an old and rich culture. We welcome diversity; therefore, the distinctive culture of Puerto Rico presents no bar as such to Statehood. The unity of our Federal-State structure, however, requires a common tongue. We do not have to look far to see what has happened in certain countries that have failed to adhere to this fundamental practice.[[261]] Surely, at a time when we are trying to eliminate ghettos of all kinds, we should not establish within our Federal-State system a "language ghetto." A condition precedent to Statehood must be the recognition and acceptance of English as the *official* language. The

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the Comm. on Education and Labor, 90th Cong., 1st Sess. 605 (1967) (testimony of Resident Commissioner Santiago Polanco-Abreu).

[258] P. CEBOLLERO, A SCHOOL LANGUAGE POLICY FOR PUERTO RICO (1945); San Juan Star, Jan. 13, 1969, at 28-29; San Juan Star, April 2, 1969, at 6.

[259] *See generally* Bou, *Significant Factors in the Development of Education in Puerto Rico,* in STATUS OF PUERTO RICO, SELECTED BACKGROUND STUDIES PREPARED FOR THE UNITED STATES-PUERTO RICO COMMISSION ON THE STATUS OF PUERTO RICO 147 (1966). *See also* HEARINGS BEFORE THE UNITED STATES-PUERTO RICO COMM. ON THE STATUS OF PUERTO RICO, S. DOC. No. 108, vol. 2, 89th Cong., 2d Sess. (1966).

[260] UNITED STATES-PUERTO RICO COMMISSION ON THE STATUS OF PUERTO RICO, STATUS OF PUERTO RICO 15 (1966).

[261] The reference would seem to be to Canada, and more specifically, Quebec.

> continuance of Spanish as a second language would not be inconsistent with this requirement.[262] (Emphasis added.)

The special situation of Puerto Rico is significant because the emphasis on English as the language of instruction in the school system and the limits that English literacy often place on access to employment are usually viewed as temporary difficulties — obstacles which people eventually surmount. In Puerto Rico no such short-term transition is in the offing. Any relaxation of English literacy requirements for Puerto Rico is not, as in the case of the Mexican-American and the Indian, a way of easing a transition, but is rather a permanent accommodation to a special political situation.

Professional entrance examinations may pose a problem in the near future with respect to Puerto Rico. Litigation appears likely in three areas: (1) the English literacy requirement of the medical profession's entrance examination; (2) the Spanish language requirement of the Puerto Rican bar examination; and, in a somewhat different category, (3) the English language requirement of the national draft deferment test.

Again, the general criterion should be whether the language of the test bears a reasonable relation to the needs of the community that will be served. At present, internship examinations for medical school graduates are administered in English. The Puerto Rico Medical Association has urged the National Council of Medical Examiners to permit Puerto Rican graduates of foreign universities (usually Spanish or Latin American universities) to be given the examination in Spanish.[263] Unless the English language examination is being used as a means to inhibit the practice of educating Puerto Rican doctors abroad, the requirement that the examination be given only in English would not seem to serve a useful purpose for the medical practitioner serving in Puerto Rico. It would appear that an exclusively English test would violate the Constitution when applied to Spanish-speaking Puerto Rican medical students wishing to practice in Puerto Rico.

The Puerto Rican bar examination, which formerly could be taken in either English or Spanish, is now administered only in Spanish.[264] This appears equally questionable. It is true that proceedings in Puerto Rican local courts are conducted in Spanish, but the federal courts operate in English. If the purpose of the bar examination is to assure adequacy of representation in the local courts, the exclusively Spanish bar examination is inappropriate. Only if the bar examination is viewed primarily as a guild requirement to divide the market, rather than as a test to assure competence of representation, can the Puerto Rican Spanish language requirement be considered constitutionally defensible. On balance, it appears that harmony within the federal system would suggest a bar examination in either language. The client will, in the long run, seek out the appropriate practitioner for his needs.

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[262] *Supplemental Views of Senator Henry M. Jackson,* in UNITED STATES-PUERTO RICO COMMISSION ON THE STATUS OF PUERTO RICO, STATUS OF PUERTO RICO 21 (1966). Senator Javits suggested two official languages as a solution. "The experience and spirit of our own Nation, in welcoming and accommodating diversity of all peoples, is much more pertinent as an augury that *two official* languages in Puerto Rico would, if need be, turn out well." *Supplemental Views of Senator Jacob K. Javits, id.* at 22 (emphasis added).

[263] San Juan Star, Feb. 12, 1966, at 17.

[264] In 1959 the Commonwealth of Puerto Rico unsuccessfully urged amendments to the federal law that would have (1) stricken the English language requirement for pleadings in the United States District Court for Puerto Rico, and (2) permitted the trial or proceedings to be conducted in Spanish if the judge determined that the interests of justice so required. S. 2023 and S. 2708, 86th Cong., 1st Sess. § 13(b) (1966); H.R. 9234, 86th Cong., 1st Sess. § 13(b) (1966). In the case of Sanchez v. United States, where the plaintiff appeared and acted in his own behalf, the federal district court permitted him to address the court in Spanish while an interpreter translated his remarks into English. San Juan Star, March 6, 1966, at 19.

The only other language requirement that federal law imposes on Puerto Rico is that the Resident Commissioner cannot be a person "who does not read and write the English language." 48 U.S.C. § 892 (1964).

The draft deferment test is in quite a different category. Presumably, its purpose is to permit those whose contribution to society will be greatest to finish their education prior to military service. Although there may be some administrative difficulty, if the test is to measure accurately a student's potential, it should be administered in the language in which he has studied and will likely continue to study and work. Following this principle, reasonableness dictates that the test, at least in Puerto Rico, should be administered in both languages.

VIII. Conclusion

The implicit premise in American law is that English is the official language of the United States. The consequences that follow from that premise, however, should be limited to requiring that the language of official government proceedings (hearings and debates) and promulgations (statutes and regulations) is English. The practical compulsions to know English in order to participate fully in other areas of American life are sufficiently great that they need not be reinforced artificially by statute.

Statutes requiring English literacy as a condition of access to other areas of American life have generally been designed to resist the entrance of certain racial groups. In the past, these groups have been the most recently arrived aliens. But now, due to decreased immigration, the burden of these English literacy tests falls on native-born citizens — the Negro, the Mexican, the Puerto Rican, and the Indian. There is considerable evidence that these laws presently continue to operate as a mechanism of racial restriction rather than as an educational device designed to uplift the American populace. In light of this, the courts should operate with a presumption that these statutes are discriminatory, and impose upon the states the burden of showing their educational or assimilative purpose.

Statutes requiring English as the language of instruction in public and private schools originated generally with the purpose of discouraging the proliferation of various church schools — primarily Catholic and Lutheran. At present, it would appear that these statutes are rarely enforced. Administrative linguistic segregation in southwestern school districts, supposedly based on educational needs, has been shown in a number of cases to be a guise for racial discrimination and has been successfully challenged in the courts. The Bilingual Education Act reflects the federal government's view that educational experimentation is required that may necessitate using Spanish or another non-English mother tongue as the language of instruction. This, of course, presumes some degree of segregation on a linguistic basis. In implementing this statute, the federal authorities should be careful to require a plan that seeks an eventual transfer of non-English-speaking students into the normal school system lest the Act be used primarily to preserve racial discrimination.

APPENDIX

UNITED STATES STATUTORY AND CONSTITUTIONAL REQUIREMENTS

ALABAMA

Voting or Holding Public Office

Voters must be able to read and write an article of the United States Constitution in English unless prevented by physical disability. ALA. CONST. amend. 223, § 1.

Education

"English shall be the only language employed in teaching the first six grades in the elementary schools in the state." ALA. CODE tit. 52, § 408 (1958).

ALASKA

Voting or Holding Public Office

Qualified voters are required to read or speak English unless prevented by physical disability. ALAS. CONST. art. V, § 1.

A voter must be able to speak or read English unless prevented by physical disability or unless he voted in the general election of November 4, 1924. ALASKA STAT. § 15.05.010 (1962).

ARIZONA

Voting or Holding Public Office

All state officers and legislators must read, write, speak, and understand English sufficiently well to conduct office without an interpreter. ARIZ. CONST. art. XX, § 8.

All county officials must be able to read and write English. ARIZ. REV. STAT. ANN. § 11-402 (1956).

Electors and voters must be able to read the United States Constitution in English unless prevented by physical disability. ARIZ. REV. STAT. ANN. § 16-101 (1956).

Education

The constitution directs the law to provide that "[all public] schools shall always be conducted in English." ARIZ. CONST. art. XX, § 7.

All schools must be conducted in English except that special programs of bilingual instruction may be provided in the first three grades. ARIZ. REV. STAT. ANN. § 15-202 (Supp. May, 1969).

Legal Proceedings and Legal Notices

Jurors must understand English. ARIZ. REV. STAT. ANN. § 21-201 (1956).

Legal notices must be in an English newspaper. ARIZ. REV. STAT. ANN. § 39-204 (1956).

Business Regulation

Child under sixteen to qualify for an employment certificate must be able to read and legibly write simple sentences in English. ARIZ. REV. STAT. ANN. §§ 23-241 to -242 (1956).

ARKANSAS

Education

English must be the basic language of instruction in all private and public schools. There is a penalty for violation of this provision. ARK. STAT. ANN. § 80-1605 (1960).

Legal Proceedings and Legal Notices

All court writs, process, proceedings, and records must be in English, "except that the proper and known name of process and technical words may be expressed in the language heretofore and now commonly used." ARK. STAT. ANN. § 22-108 (1962).

Business Regulation

Bedding must be labeled in English. ARK. STAT. ANN. § 82-720 (1960).

Concentrated commercial feeding stuffs must be labeled in English. ARK. STAT. ANN. § 78-701 (1957).

CALIFORNIA

Voting or Holding Public Office

Members of precinct boards must read and write English. CAL. ELECTIONS CODE § 1611 (West 1961).

All proceedings at the polls must be conducted in English. Election officials while on duty may speak only English. CAL. ELECTIONS CODE § 14217 (West 1961).

Electors must be able to read the California constitution in English and be able to write their names, except that this qualification does not apply to those unable to comply because of a physical disability, "nor to any person who had the right to vote on October 10, 1911, nor to any person who was sixty years of age and upwards on October 10, 1911 . . . ." CAL. CONST. art. II, § 1.

Education

English must be the basic language of instruction in all schools. Bilingual instruction may be provided where educationally advantageous to the pupils. CAL. EDUC. CODE § 71 (West 1969).

There is a provision for remedial and corrective programs to enhance pupils' interest and competence in English and to encourage the teaching of English as a second language, as, for example, where Spanish-speaking children are involved. CAL. EDUC. CODE § 6458(h) (West 1969).

Legal Proceedings and Legal Notices

All laws, official writings, executive, legislative and judicial proceedings may be conducted, preserved, and published in English only. CAL. CONST. art. IV, § 24.

Every written proceeding in court "shall be in the English language, and judicial proceedings shall be conducted, preserved, and published in no other." Cal. Civ. Pro. Code § 185 (West 1954).

If a will is written in a foreign language, then a certified translation must be recorded in lieu of the original. Cal. Prob. Code § 332 (West 1956).

"Whenever any notice, report, statement or record is required or authorized by this code, it shall be made in writing in the English language." Cal. Corp. Code § 8 (West 1955).

Similar provisions appear in other codes. Cal. Agric. Code § 11 (West 1968); Cal. Bus. & Prof. Code § 11 (West 1962); Cal. Educ. Code § 31 (West 1969); Cal. Elections Code § 8 (West 1961); Cal. Harb. & Nav. Code § 8 (West 1955); Cal Fin. Code § 8 (West 1968); Cal. Fish & Game Code § 7 (West 1958); Cal. Health & Safety Code § 8 (West 1955); Cal. Ins. Code § 8 (West 1955); Cal. Labor Code § 8 (West 1955); Cal Mil. & Vet. Code § 8 (West 1955); Cal. Pub. Res. Code § 8 (West 1956); Cal. Pub. Util. Code § 8 (West 1956); Cal. Rev. & Tax. Code § 8 (West 1956); Cal. Sts. & H'ways Code § 8 (West 1969); Cal. Unemp. Ins. Code § 8 (West 1956); Cal. Vehicle Code § 9 (West 1960); Cal. Water Code § 8 (West 1956); Cal. Welfare & Inst'ns Code § 8 (West 1966).

Miscellaneous

Welfare information must be printed in English and may be printed separately in Spanish, or in English and Spanish. Cal. Welfare & Inst'ns Code § 10607 (West 1966).

CANAL ZONE

Legal Proceedings and Legal Notices

Court proceedings must be conducted and preserved in English. C. Z. Code tit. 3, § 278 (1963).

COLORADO

Education

Public schools must be conducted in English. Prior to the eighth grade, no child may attend any school where studies are not taught in English while the district schools are in session. Colo. Rev. Stat. Ann. § 123-21-3 (1963).

Legal Proceedings and Legal Notices

Every written proceeding in court must be in English. Colo. Rev. Stat. Ann. § 37-1-22 (1963).

Jurors must speak and understand English. Colo. Rev. Stat. Ann. § 78-1-1 (1963).

CONNECTICUT

Voting or Holding Public Office

Electors must be able to read any article of the constitution or any section of the statutes of the state in the English language. Conn. Gen. Stat. Ann. § 9-12 (1958).

Education

All instruction and administration in public and private elementary schools must be in English. No more than one hour's instruction per day may be given in a language other than English. There is a penalty for violation of this provision. CONN. GEN. STAT. ANN. § 10-17 (1958).

Business Regulation

Dental medicine or dental surgery examinations must be conducted in English. CONN. GEN. STAT. ANN. § 20-108 (1958).

Mechanical optician examinations must be conducted in English. CONN. GEN. STAT. ANN. § 20-146 (1958).

All physicians or surgeons must, upon request, write duplicates of their prescriptions in English. CONN. GEN. STAT. ANN. § 20-14 (1958).

Small lenders must deliver to borrowers statements of account in English. CONN. GEN. STAT. ANN. § 36-235 (1958).

DELAWARE

Voting or Holding Public Office

No person may vote unless able to read the Delaware constitution in English and write his name, except that this qualification does not apply to those unable to comply because of a physical disability. DEL. CONST. art. 5, § 2.

Education

Board of education must ensure that all elementary school subjects are taught in the English language. DEL. CODE ANN. tit. 14, § 122(b)(5) (1953).

Business Regulation

The driver of a motor truck carrying explosives must be able to read and write English. DEL. CODE ANN. tit. 16, § 7116 (1953).

DISTRICT OF COLUMBIA

Legal Proceedings and Legal Notices

Jurors must be able to read, write, speak and understand English. D.C. CODE ANN. § 11-2301 (1966).

FLORIDA

Legal Proceedings and Legal Notices

A foreign-language will must contain a true and complete English translation. FLA. STAT. ANN. § 732.34 (1964).

Miscellaneous

Minutes of fraternal benefit society meetings must be in English. FLA. STAT. ANN. § 632.191(2) (1960).

GEORGIA

Voting or Holding Public Office

To register as an elector and to vote a person must be able to read and write in English any paragraph of the Constitution of the United States or of Georgia, or, if unable to do so because of a physical disability, the person must be able to "understand and give a reasonable interpretation" of said constitution read to him by any one of the registrars. GA. CONST. art. 2, § 704.

GUAM

Education

All courses of study, except required foreign language courses, must be taught in English. GUAM GOV'T CODE § 11200 (1961).

Legal Proceedings and Legal Notices

Judicial proceedings must be conducted, preserved and published only in English. GUAM CODE CIV. PROC. § 185 (1953).

HAWAII

Voting or Holding Public Office

Voters must speak, read, and write the English or Hawaiian language, unless unable to comply because of a physical disability. HAWAII CONST. art. II, § 1.

Business Regulation

All insurance records, statements, and reports required or authorized by law must be in English. HAWAII REV. STAT. § 431-20 (1968).

IDAHO

Education

"Instruction in all subjects in the public schools, except that required for the teaching of foreign languages, shall be conducted in the English language." IDAHO CODE ANN. § 33-1601 (1949).

Legal Proceedings and Legal Notices

Every written proceeding in court shall be in the English language and "judicial proceedings shall be conducted, preserved and published in no other." IDAHO CODE ANN. § 1-1620 (1947).

Jurors must possess sufficient knowledge of the language of the court proceedings. IDAHO CODE ANN. § 2-201 (1947).

ILLINOIS

Education

"Instruction in the elementary branches of education in all schools shall be in the English language except in vocational schools where the pupils have already received the required instruction in English during the current school year." ILL. ANN. STAT. ch. 122, § 27-2 (Smith-Hurd 1962).

INDIANA

Voting or Holding Public Office

A member of a precinct election board must read, write and speak English. IND. ANN. STAT. § 29-3201 (1969).

Education

All instruction in elementary schools must be in English. There is a penalty for violation. IND. ANN. STAT. §§ 28-3401 to -3403 (1948).

Legal Proceedings and Legal Notices

Legal and official notices, and publications of legal and other official matters, must be published in newspapers printed in English. IND. ANN. STAT. §§ 2-807, -4706 (1967).

Election boards must print cards in English and such other language as they deem necessary. IND. ANN. STAT. § 29-5011 (1969).

A juror may be challenged for cause if he is unable to comprehend the evidence and the instructions of the court due to ignorance of English. IND. ANN. STAT. § 9-1504 (1956).

Business Regulation

Pawnbrokers must keep certain records in English. IND. ANN. STAT. § 18-3219 (1964).

Bedding must be labeled in English. IND. ANN. STAT. § 35-3607 (1969).

IOWA

Voting or Holding Public Office

Every civil service employee must be able to read and write the English language. IOWA CODE ANN. § 365.17 (1946).

Education

The medium of instruction in all secular subjects (except foreign languages) taught in all schools, public and private, must be English only. A penalty is provided for violation. IOWA CODE ANN. § 280.5 (1946).

Legal Proceedings and Legal Notices

"All qualified electors of the state . . . who can speak, write, and read the English language, are competent jurors . . . . " IOWA CODE ANN. § 607.1 (1946).

All legal notices, proceedings, and other matters required to be published in a newspaper must be published only in English and in newspapers published wholly in English. IOWA CODE ANN. § 618.1 (1946).

All articles of incorporation must be in English. IOWA CODE ANN. § 499.40 (1946).

Business Regulation

A child labor work permit may be issued only if a certified school record shows that the child is able to read intelligently and write legibly simple sentences in English. IOWA CODE ANN. § 92.6 (1946).

Certain wrapped packages and articles must be conspicuously marked in English. IOWA CODE ANN. § 189.9 (1969).

Labels on all narcotic drugs must be in English. IOWA CODE ANN. § 204.10 (1969).

Prison-made goods must be labeled in English. IOWA CODE ANN. § 216.1 (1969).

Mattresses and comforters must be labeled in English. IOWA CODE ANN. § 209.3 (1969).

KANSAS

Education

All instruction in the elementary schools must be given in English. KAN. STAT. ANN. § 72-1101 (1963).

KENTUCKY

Legal Proceedings and Legal Notices

Every writing contemplated by the laws of Kentucky must be in English. KY. REV. STAT. ANN. § 446.060(2) (1963).

LOUISIANA

Voting or Holding Public Office

Electors and voters must be able to read and to write and file a written application in English or a mother tongue, except that those unable to write because of a physical disability may qualify by dictating the same to the registration officer. LA. CONST. art. 8, § 1(c); LA. REV. STAT. § 18:31(3) (1969).

Education

General exercises in the public schools must be conducted in English. LA. CONST. art. 12, § 12.

Legal Proceedings and Legal Notices

Publication of judicial notices or legal advertisements must be in English. LA. REV. STAT. § 43:201 to 202 (1950). LA. REV. STAT. § 1:52 (1950).

Articles of incorporation for both business and nonprofit corporations must be in English. LA. REV. STAT. § 12:24 (1969).

Any act or contract made or executed in French is as legal and binding upon the parties as if it had been made or executed in English. LA. REV. STAT. § 1:51 (1950).

Jurors must be able to read, write, and speak English. LA. REV. STAT. § 13:3041 (1968); LA. CRIM. PRO. CODE ANN. art. 401 (West 1967).

Business Regulation

Every pawnbroker and dealer in second-hand wares must keep a book, in English, recording transactions. LA. REV. STAT. § 37:1755, :1864 (1964).

Dealers and manufacturers of boots must stamp the composition of the boot on the sole in English. LA. REV. STAT. § 51:761 to :762 (1965).

All shrimp processing plants and wholesale dealers must keep their books in English. LA. REV. STAT. § 56:501 (1950).

MAINE

Voting or Holding Public Office

A voter must read from the constitution of the state of Maine and must write his name in English. ME. REV. STAT. ANN. tit. 21, § 241 (1964).

Education

The basic language of instruction in all schools, public and private, must be English except in districts having a concentration of non-English-speaking families. In such areas bilingual techniques are permitted up to grade two. Act of May 5, 1969, ch. 234, § 1, *amending* ME. REV. STAT. ANN. tit. 20, § 102(7) (1964); Act of May 5, 1969, ch. 234, § 2, *amending* ME. REV. STAT. ANN. tit. 20, § 102 (1964).

Legal Proceedings and Legal Notices

To be qualified to publish legal notices, legal advertising and other matter required by law to be published in a newspaper, a newspaper must be printed in English. ME. REV. STAT. ANN. tit. 1, § 601 (1964).

The Attorney General must prepare and publish in every daily newspaper of the state an explanatory statement describing the intent and content of each constitutional resolve or state-wide referendum. "Such explanatory statement may be published in the English language in a foreign language newspaper." ME. REV. STAT. ANN. tit. 1, § 353 (1964).

Annual financial reports may be published in English in foreign-language newspapers. ME. REV. STAT. ANN. tit. 5, § 1547 (1964).

MARYLAND

None.

MASSACHUSETTS

Voting or Holding Public Office

A voter must read the state constitution in English and write his name, unless unable to read or write because of a physical disability. MASS. GEN. LAWS ANN. ch. 51, § 1 (1958).

Education

The school committee may approve a private school only if instruction in all studies required by law is in English. MASS. GEN. LAWS ANN. ch. 76, § 1 (1958).

Legal Proceedings or Legal Notices

Notices of abandoned property must be published in English language newspapers. MASS. GEN. LAWS ANN. ch. 200A, § 8 (1955).

Business Regulation

The labels on containers of agricultural, vegetable, or flower seeds must be in English. MASS. GEN. LAWS ANN. ch. 95, § 261B (1958).

Certain birds and mammals brought for breeding but killed and sold for food must be labeled in English. MASS. GEN. LAWS ANN. ch. 131, § 105 (1958).

Used-car vendors and pawnbrokers must keep records in the English language. MASS. GEN. LAWS ANN. ch. 140, §§ 62, 79 (1958).

Industrial homework must be labeled in English. MASS. GEN. LAWS ANN. ch. 149, § 147B (1958).

MICHIGAN

Education

All instruction (except for religious instruction in private schools) from the first to the eighth grade in all schools, public and private, must be conducted in English. MICH. STAT. ANN. § 15.3360 (1968).

MINNESOTA

Voting or Holding Public Office

Assistance must be given to voters who cannot speak or read English. MINN. STAT. ANN. §§ 204.13, 206.20 (1962).

A judge must be able to read, write, and speak the English language understandably. MINN. STAT. ANN. § 203.22(4) (1962).

Education

Schools must be taught in English from textbooks written in English. Foreign-language instruction is permitted no more than one hour a day. MINN. STAT. ANN. §§ 120.10, 126.07 (1960).

Legal Proceedings or Legal Notices

Jurors must be able to speak and understand the English language. MINN. STAT. ANN. § 628.43 (1945).

Business Regulation

Articles of incorporation must be in the English language. MINN. STAT. ANN. § 317.08 (Supp. 1969).

Prison keepers must be able to read and write English intelligently. MINN. STAT. ANN. § 641.06 (1945).

MISSISSIPPI

Voting or Holding Public Office

Voters must be able to read and write any section of the constitution of Mississippi and give a reasonable interpretation thereof to the county registrar, unless unable to read or write because of a physical disability. MISS. CONST. art. 12, § 244; MISS. CODE ANN. §§ 3212, 3235 (1942).

MISSOURI

Legal Proceedings and Legal Notices

Jurors must be able to read, write, speak and understand English. MO. ANN. STAT. § 494.020 (Supp. 1968).

All writs, process, proceedings, and records in any court of record and all inferior tribunals must be in English, except that the proper and known names of process and technical words may be in the language commonly used. MO. ANN. STAT. § 476.050 (1949).

Business Regulation

Railroad flagmen must be able to read, write, and speak the English language plainly. There is a penalty for violation. MO. ANN. STAT. §§ 389.970, .980 (1949).

MONTANA

Education

Public schools must be taught in English. MONT. REV. CODES ANN. § 75-2002 (1947).

Legal Proceedings and Legal Notices

Every written proceeding in court must be in English, and "judicial proceedings must be conducted, preserved and published in no other." MONT. REV. CODES ANN. § 93-1104 (1947).

NEBRASKA

Education

Public and private schools must be taught in English. NEB. CONST. art. I, § 27.

Legal Proceedings and Legal Notices

The English language is the official language of the state, and all official proceedings, records, and publications must be in English. NEB. CONST. art. I, § 27.

Jurors must be able to read, write, and understand English. NEB. REV. STAT. § 25-1601 (1964).

Business Regulation

Pawnbrokers must keep records in English. NEB. REV. STAT. § 69-204 (1966).

Miscellaneous

All public meetings, except those "held for the purpose of religious teachings, instruction or worship, or lodge organizations," must be conducted in English. There is a penalty for violation. NEB. REV. STAT. §§ 28-741 to -742 (1964).

NEVADA

Education

It is unlawful for anyone in a private school to teach any subject, other than foreign languages, in any language other than English. There is a penalty for violation. NEV. REV. STAT. § 394.140 (1967).

Legal Proceedings or Legal Notices

Every written proceeding in a court of justice or before a judicial officer must be in English. NEV. REV. STAT. § 1.040 (1967).

Business Regulation

Miners handling explosives must clearly speak and readily understand English and must readily read and understand any English sign that pertains to rules of safety in the handling of such explosives. There is a penalty if an employer hires any who cannot. NEV. REV. STAT. § 518.350 (1967).

NEW HAMPSHIRE

Voting or Holding Public Office

A voter, "unless he is prevented by physical disability, or unless he had the right to vote, or was sixty years of age or upwards" on January 1, 1904, must write and read in such manner as to show he is not being assisted and is not reciting. N.H. REV. STAT. ANN. §§ 55:10, :12 (1955).

Education

In all schools, English must be used exclusively both for purposes of instruction and for general administration except for (1) foreign language instruction and (2) devotional exercises in private schools. N.H. REV. STAT. ANN. §§ 189:19-:21 (1955).

NEW JERSEY

Legal Proceedings or Legal Notices

Newspapers publishing resolutions, official proclamations, notices, or advertising of any sort required by law must be printed entirely in English. N.J. REV. STAT. § 35:1-2.1.

Instruments received for record or filing must be in English. N.J. REV. STAT. § 47:1-2 (1939).

No laws or public documents may be printed at state cost unless in English. N.J. REV. STAT. § 52:36-4 (1955).

Business Regulations

Every document relating to a domestic or foreign corporation required or permitted to be filed with the state secretary of state shall be in English, except that the corporate name need not be in English if written in English letters, and except foreign corporations required to submit a certificate of good standing. N.J. REV. STAT. § 14A:1-6 (1939).

NEW MEXICO

Education

Public schools must always be conducted in English. N.M. CONST. art. XXI, § 4.

The legislature shall provide for training of teachers to become proficient in both English and Spanish to qualify them to teach Spanish-speaking students in school. N.M. CONST. art. XII, § 8.

Legal Proceedings and Legal Notices

Amendments to the constitution must be published in English and Spanish where newspapers in both languages are published in the county. N.M. CONST. art. XIX, § 1.

Publication of county and city council meetings must be in Spanish only where seventy-five percent of the area speaks Spanish; in English only where seventy-five percent of the area speaks English, and in both languages where the use of both is between twenty-five percent and seventy-five percent. N.M. STAT. ANN. § 10-2-11 (1953).

A petition to establish drainage, irrigation or conservancy district must be published in English and Spanish. N.M. Stat. Ann. §§ 75-22-3, 75-21-3, 75-23-4, 75-28-3(6) (1953).

All publications, ballots, ballot labels, and instructions for bond elections must be printed in English and may also be printed in Spanish. N.M. Stat. Ann. § 77-15-3 (1968).

NEW YORK

Voting or Holding Public Office

Voters, unless physically disabled, must be able to read and write English. N.Y. Const. art. 2, § 1.

"[A] new voter may present as evidence of literacy a certificate or diploma showing that he has completed the work up to and including the sixth grade of an approved elementary school or of an approved higher school in which English is the language of instruction or a certificate or diploma showing that he has completed the work up to and including the sixth grade in a public school or a private school accredited by the Commonwealth of Puerto Rico in which school instruction is carried on predominantly in the English language . . . ." N.Y. Election Law § 168 (McKinney Supp. 1968).

Education

English is the language of instruction and textbooks must be written in English. Two years after enrollment, pupils may be instructed in their native tongue and in English if they are experiencing difficulty reading and understanding English. N.Y. Educ. Law § 3204 (McKinney Supp. 1968).

Legal Proceedings and Legal Notices

Conveyances may be recorded in another language if written in English letters or if accompanied by an authorized translation. N.Y. Real Prop. Law § 333 (McKinney 1968).

Business Regulation

Kosher meat must be identified in English. N.Y. Agric. & Mkts. Law §§ 201-a to -b (McKinney 1954).

Industrial homework must be labeled in English. N.Y. Labor Law § 354.4 (McKinney 1965).

Barber examinations must be in English. N.Y. Gen. Bus. Law § 434.3 (McKinney 1968).

Declaration of incorporators seeking incorporation of an insurance business must be filed in English. N.Y. Ins. Law § 8 (McKinney 1966).

NORTH CAROLINA

Voting or Holding Public Office

Registrants must be able to read and write any section of the constitution of North Carolina in English. N.C. Const. art. VI, § 4; N.C. Gen. Stat. § 163-58 (1964).

Education

All subjects except foreign languages must be taught in English. Teachers or principals who refuse will be dismissed. N.C. Gen. Stat. § 115-198 (1965).

NORTH DAKOTA

Education

All reports and records of school officers and proceedings of school meetings must be in English. If money belonging to a school district is expended for a school where English is not the medium of instruction, then a civil suit can be brought to return the money to the school district. N.D. CENT. CODE § 15-47-03 (1960).

Legal Proceedings and Legal Notices

Official newspapers must be at least three-fourths English. N.D. CENT. CODE § 46-06-2 (1960).

OHIO

Legal Proceedings and Legal Notices

Newspapers of general circulation, for purposes of publishing the certificates of foreign insurance companies (promising that they will comply with the laws of the state), must be printed in English. OHIO REV. CODE ANN. § 3905.11 (Page 1954).

Business Regulation

Labels on gasoline, oils, and paints must be printed in English. OHIO REV. CODE ANN. § 3741.02 (Page 1954).

Licensed employment agencies must keep records in English. OHIO REV. CODE ANN. § 4143.11 (Page 1965).

OKLAHOMA

Education

Instruction in public schools must be in English except where necessary for teaching a foreign language. OKLA. STAT. ANN. tit. 70, § 11-2 (1966).

Legal Proceedings and Legal Notices

No instrument affecting title to real estate may be recorded or filed unless plainly printed or written (or partly printed and partly written) in English. OKLA. STAT. ANN. tit. 16, § 28 (1951).

Business Regulation

Examinations by an electrology board must be written, oral, and clinical and must be in English. OKLA. STAT. ANN. tit. 59, § 806 (1963).

OREGON

Voting or Holding Public Office

Unless physically unable, voters must be able to read and write English. ORE. CONST. art. II, § 2; ORE. REV. STAT. § 247.131 (1968).

A voter in a school board election must be able to read and write English. ORE. CONST. art. VIII, § 6.

Education

"All subjects in public, private or parochial schools, except foreign languages, shall be taught in English." ORE. REV. STAT. § 336.078 (1968).

PENNSYLVANIA

Education

Every child of school age must attend a day school in which subjects and activities prescribed by the state are taught in English. Pa. Stat. Ann. tit. 24, § 13-1327 (1962).

In every elementary public and private school, subjects of instruction must be taught in English and from English texts. Pa. Stat. Ann. tit. 24, § 15-1511 (1962).

Business Regulation

Commercial feed and homemade materials must be labeled in English with certain information. Pa. Stat. Ann. tit. 3, § 57.4 (1963); Pa. Stat. Ann. tit. 43, § 491-14 (1964).

Employment agencies, junk shops, dealers in secondhand goods, and motor vehicle finance companies must keep certain records in English. Pa. Stat. Ann. tit. 43, § 551 (1964); Pa. Stat. Ann. tit. 53, § 4432 (1957); Pa. Stat. Ann. tit. 69, § 612 (1965).

Manufacturers of certain dangerous products must post certain danger signs, in English, throughout their plants. Pa. Stat. Ann. tit. 43, § 476 (1964).

PUERTO RICO

Voting or Holding Public Office

In a plebiscite, certain precinct election officials must be able to read and write Spanish or English. P.R. Laws Ann. tit. 16, § 857 (Supp. 1968).

The Resident Commissioner must be able to read and write English. 48 U.S.C. § 892 (1964).

Members of the Legislative Assembly must be able to read and write Spanish. P.R. Const. art. III, § 5.

Legal Proceedings and Legal Notices

In the Commonwealth government, English and Spanish are to be used indiscriminately, with translations and oral interpretations provided when necessary. No public or private document is void on account of the language in which it is expressed. P.R. Laws Ann. tit. 1, §§ 51, 53 (1965).

The decisions of the Supreme Court of Puerto Rico must be published in English and Spanish. P.R. Laws Ann. tit. 4, § 489 (Supp. 1968).

Reports of the governor, department heads, bureaus, or agencies published in English must be translated into Spanish. P.R. Laws Ann. tit. 3, § 941 (1965).

Jurors must be able to read and write Spanish. P.R. R. Crim. Pro. 96.

Public instruments must be drawn in Spanish. Such instruments may be drawn in English if the parties, witnesses, and notary are literate in English. P.R. Laws Ann. tit. 4, § 1017 (1965).

In case of a discrepancy between the English and Spanish texts of a law, the language in which the bill originated is preferred, except: (a) if the statute is adapted from a statute of the United States or of any state thereof, the English text will prevail; (b) if the statute is of Spanish origin, the Spanish text will be preferred; (c) if the rules listed are not adequate, the Spanish text prevails. P.R. Laws Ann. tit. 31, § 13 (1967).

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Pleadings and proceedings in the United States District Court for Puerto Rico must be in English. 48 U.S.C. § 864 (1964).

RHODE ISLAND

Education

Whenever twenty students apply for a course in Portuguese, Spanish or Italian languages in any high school, the school committee of the town must arrange for such a course conducted by a competent teacher. R.I. Gen. Laws Ann. § 16-22-8 (Supp. 1967).

SOUTH CAROLINA

Voting or Holding Public Office

Voters must be able to read and write any section of the constitution. S.C. Code Ann. § 23-62(4) (1962).

SOUTH DAKOTA

Education

Instruction in all public and private schools must be in English except for foreign and ancient language instruction and religious subjects. S.D. Comp. Laws § 13-33-11 (1968).

TENNESSEE

None.

TEXAS

Education

All examinations for obtaining a teacher's certificate must be conducted in writing and in the English language. Tex. Rev. Civ. Stat. Ann. arts. 2879, 2880 (1965).

Legal Proceedings and Legal Notices

In any county which is part of two or more judicial districts, and in counties bordering the international boundary, if judges request, part-time or full-time interpreters may be appointed. Tex. Rev. Civ. Stat. Ann. art. 3737d-1 (Supp. 1968).

One cannot be appointed a guardian unless he is able to read and write English. Tex. Prob. Code Ann. § 110(f) (1956).

Business Regulation

Any insurance carrier licensed in Mexico may do business in Texas if certain documents are filed in English. Tex. Ins. Code Ann. art. 8.24(a) (1963).

UTAH

Legal Proceedings and Legal Notices

Every written proceeding in court must be in English; and judicial proceedings must be conducted, preserved and published in no other language. Utah Code Ann. § 78-7-22 (1953).

Business Regulation

Vendors of poison must attach labels giving the antidote in English; the same may be added in a foreign language. UTAH CODE ANN. § 58-17-17 (1953).

Obstetric and chiropodic examinations must be in English. UTAH CODE ANN. §§ 58-12-11, 58-5-3 (1953).

VERMONT

Legal Proceedings and Legal Notices

Writs, processes, complaints, informations, indictments, pleas, answers and entries in the court, except technical terms, must be in English. VT. STAT. ANN. tit. 4, § 671 (1958).

VIRGIN ISLANDS

Voting or Holding Office

No language qualification may ever be imposed upon or required of any voter. Act of July 22, 1954, ch. 558, § 4, 68 Stat. 497 (Revised Organic Act of 1954).

VIRGINIA

Voting or Holding Public Office

Voting application must be written by applicant without assistance, unless he is physically unable to do so. VA. CODE ANN. § 24-68 (1969).

WASHINGTON

Voting or Holding Public Office

Voters must be able to read and speak English. WASH. CONST. amend. 5.

Education

All common schools must be taught in English. WASH. REV. CODE ANN. § 28.05.010 (1964).

Legal Proceedings and Legal Notices

Legal newspaper must be published regularly, at least once a week, in English. WASH. REV. CODE ANN. § 65.16.020 (1966).

WEST VIRGINIA

Education

The basic language of instruction in all schools, public, private, and parochial, must be English. W. VA. CODE ANN. § 18-2-7 (1966).

WISCONSIN

Education

All instruction must be in the English language, except that any foreign language may be taught up to one hour a day. WIS. STAT. ANN. § 40.46(1) (1966).

Legal Proceedings and Legal Notices

All writs, processes, proceedings and records in any court must be in English, except for the proper and known names of process and technical words which may be expressed in the language commonly used. Wis. Stat. Ann § 256.18 (1957).

All county court notices must be printed in English but may be published in newspapers printed in any language. Wis. Stat. Ann. § 324.20 (1958).

The county board of supervisors may publish notices in foreign languages in addition to English in certain cases. Wis. Stat. Ann. § 59.09(4) (1957).

If a will is not written in English, a verified translation may be attached. Wis. Stat. Ann. § 310.07(7) (1958).

Business Regulation

Small loan lenders must deliver to each borrower a statement of the loan in English. Wis. Stat. Ann. § 214.13 (1957).

Miscellaneous

The Department of Agriculture must collect and publish information to attract desirable immigrants and capital. Such data may be printed in a foreign language. Wis. Stat. Ann. § 93.07 (7)(b) (1957).

WYOMING

Voting or Holding Public Office

No person may vote who cannot read the constitution of the state. Wyo. Const. art. 6, § 9.